



JOHN H. LYNCH
GOVERNOR

STATE OF NEW HAMPSHIRE
OFFICE OF ENERGY AND PLANNING
4 Chenell Drive
Concord, NH 03301-8501
Telephone: (603) 271-2155
Fax: (603) 271-2615



www.nh.gov/oep

Approval by the Governor
and Council on 4/14/10
Agenda Item # 7

March 22, 2010

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

ORIGINAL

NHRECOVERY
putting new hampshire to work

REQUESTED ACTION

The Office of Energy and Planning (OEP) respectfully requests authorization to enter into a **SOLE SOURCE** Memorandum of Agreement with the New Hampshire Public Utilities Commission (PUC) (Vendor # 177914), Concord, NH in the amount of \$500,000.00, for a residential rebate program to be accomplished as part of the American Recovery and Reinvestment Act – Expanded Renewable Energy Program, effective upon Governor and Council approval through April 1, 2012. 100% Federal Funds (ARRA-SEP).

Funding is available in the following account, Office of Energy and Planning, State Energy Programs, with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified.

| | <u>FY 2010</u> | <u>FY 2011</u> | <u>FY2012</u> |
|---|----------------|----------------|---------------|
| 01-02-02-029910-0850 | | | |
| 102-500731 Contracts for Program Services | \$30,000 | \$350,000 | \$120,000 |

EXPLANATION

The intent of this Agreement is to provide funding for the PUC to develop, promote, coordinate, oversee, and monitor a new statewide two-year rebate program for homeowners who invest in wood-pellet, central-heating systems that use bulk-fuel delivery.

Residential central wood-pellet heating systems with bulk-delivery capability cost significantly more than wood-pellet or cordwood stoves, and much more than most fossil-fuel heating systems. Initial system cost is a significant barrier to wider technology adoption, although historically the wood-pellet fuel is less expensive and price-volatile than heating oil, natural gas, and propane. These systems offer the convenience of a central heating system, easier handling of fuel, use of locally produced fuel, and significant reductions of emissions.

For a number of years, the wood-pellet industry has been challenged with expanding bulk delivery services: consumers won't purchase systems if they feel fuel is inconvenient, unavailable or difficult to get; pellet companies won't provide the bulk-delivery services if they feel consumers haven't invested in the systems. Currently, the bulk-delivery infrastructure in New Hampshire is minimal, which increases costs to consumers or deters them from making the investment. Stakeholders and industry watchers concur that this small program will stimulate the expansion of bulk-delivered pellet fuel in New Hampshire.

One of the Recovery Act's overarching goals is to shift to new, efficient, and sustainable technologies. This program's intended purpose is to stimulate this sector of the economy. The wood products industry has long

been an important part of New Hampshire's economy; this program will contribute to its sustained place in the state.

Strict reporting requirements to OEP will allow progress to be tracked by the public as well as by oversight agencies, and reported to both the NH Office of Economic Stimulus and the Federal Department of Energy.

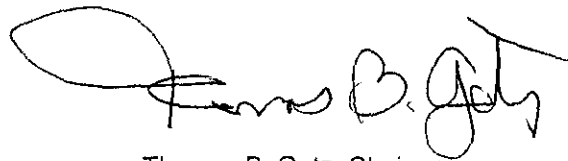
This contract is sole source in order to achieve administrative efficiencies through the Sustainable Energy Division at the Public Utilities Commission. The PUC currently manages the Renewable Energy Fund and has issued more than 240 rebates for residential installations of solar electric and small wind systems. The rebate program for solar hot water systems is soon to begin. This pellet heating system rebate program can be efficiently run using the existing administrative structure, outreach programs, and stakeholder network. In addition, the general public now recognizes the PUC as the funder of similar rebate programs.

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Sincerely,



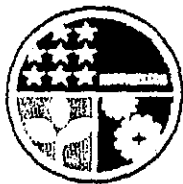
Joanne O. Morin, Director,
Office of Energy and Planning



Thomas B. Getz, Chairman
Public Utilities Commission

Attachments

G&C 04/14/10
Page 1 of 2



NHRECOVERY
putting new hampshire to work



April 14, 2010

**Memorandum of Agreement
between
Office of Energy and Planning
and
Public Utilities Commission**

1. Project Title:

American Recovery and Reinvestment Act - State Energy Programs – Expanded Renewable Energy Program – Residential Central Pellet Heating System Rebate

2. Project Period:

This Memorandum of Agreement (MOA) is effective from Governor and Executive Council approval date through April 30, 2012 for program activities, invoicing, and program year closeout. All funds must be expended by April 1, 2012. The New Hampshire Office of Energy and Planning at any time, in its sole discretion, may terminate the contract or postpone or delay all and any part of this contract, upon written notice.

3. Program Description and Purpose:

The New Hampshire Office of Energy and Planning (OEP) awards a total of \$500,000 in American Recovery and Reinvestment Act – State Energy Program (ARRA-SEP) – Residential Central Pellet Heating System Rebate funds to the New Hampshire Public Utilities Commission, herein referred to as "PUC" or "Contractor", for the purpose of rebating NH residents for their investments in high-efficiency, bulk-fuel capable wood-pellet central boilers and furnaces. Not more than \$50,000 shall be used by PUC for administrative costs.

The goals of the program are:

- a. Stimulate economic development through market expansion of local fuels and manufacturing.
- b. Create and retain jobs, particularly in a clean-energy field.
- c. Expand the market of available wood-pellet central heating systems.
- d. Increase sales and installation of these systems.
- e. Develop a stable and competitive wood-pellet bulk-fuel delivery infrastructure.
- f. Reduce fossil-fuel use for home heating.
- g. Reduce emissions from fossil fuels.

4. Program Overview:

Residential central wood-pellet heating systems with bulk-delivery capability cost significantly more than wood-pellet or cordwood stoves, and much more than most fossil-fuel heating systems. Initial system cost is a significant barrier to wider technology adoption, although historically the wood pellet fuel is less expensive and volatile than heating oil, natural gas, and propane. These systems offer the convenience of a central heating system, easier handling of fuel, use of locally produced fuel, and significant reductions of emissions.

For a number of years, the wood-pellet industry has been challenged with expanding bulk delivery services in a chicken-egg scenario: consumers won't purchase systems if they feel fuel is inconvenient, unavailable or

difficult to get; pellet companies won't provide the bulk delivery services if they feel consumers haven't invested in the systems. Currently, the bulk-delivery infrastructure in New Hampshire is minimal, which increases costs to consumers or deters them from making the investment. Stakeholders and industry watchers concur that this small program could stimulate the expansion of bulk-delivered pellet fuel in New Hampshire.

Early adopters of these systems seek both financial assistance with their upfront cost and recognition from government that this technology has merit. Federal Tax Credits of 30% of the cost up to \$1,500 are available; however that does not dramatically impact a \$12,000-\$20,000 investment. A rebate of up to \$6,000, along with the Federal Tax Credits, will help spur the wider adoption of these systems.

One of the Recovery Act's overarching goals is to shift to new, efficient, and sustainable technologies. While this program will be small and short-lived, its intended purpose is to stimulate this sector of the economy. The wood products industry has long been an important part of New Hampshire's economy; this program could contribute to its sustained place in the state.

5. Attachments to this MOA:

Attached to this contract shall be documents that further guide program administration and requirements:

- a. Exhibit A: Project Costs
- b. Exhibit B: Special Provisions
- c. Exhibits C, D, E, F, G, H: Certifications and Assurances
- d. Attachment I: US DOE ARRA-SEP Terms and Conditions
- e. Attachment II: US OMB Implementing Guidance
- f. Attachment III: Budget

6. Scope of Services:

PUC shall bring the Project to successful completion by performing the following tasks:

Develop, launch, promote, coordinate, oversee, and monitor the program:

- a. The PUC shall provide definitions for the following terms to be used in developing the program and determining appropriate systems that qualify for rebates: Rebate, Residence, Contractor, Vendor, Central Heating System, High-Efficiency, Bulk-Delivery Capable, Wood-Pellet Fuel, High-Efficiency Pellet Boiler, High-Efficiency Pellet Furnace, and others as necessary.
- b. The PUC shall determine what systems qualify for the rebate.
- c. Details about the rebate shall include:
 - i. The rebate shall be for 30% of the system cost and installation, capped at \$6,000.00.
 - ii. The rebate shall be available only for qualifying systems that become operational between Governor and Executive Council Approval and April 1, 2012, and shall not be available retroactively.
 - iii. The rebate shall be available on a first-come, first-served basis.
 - iv. The cost of wood pellets are not part of the rebate.
 - v. The rebate shall be available only to residents of NH for their primary residences.
 - vi. The rebated system may be installed in new construction or in an existing residence.
 - vii. Any exterior storage system including silos or sheds may trigger Historic Preservation provisions, and as such may require approval from the NH Division of Historical Resources.
 1. If appropriate, develop a programmatic agreement with the NH Division of Historic Resources to simplify and expedite the approval process with NHPA.
 - viii. Residents receiving this rebate may combine other local, state, or federal financial incentives with this rebate.
 - ix. Residents receiving this rebate may be required to pay taxes on the value of the rebate received and should seek tax advice from a qualified professional.
- d. Develop an application process for residents to request and receive rebates for qualifying products.
 - i. Application shall include information about the applicant such as name, address, phone number, town, county, and congressional district.

and shall monitor and enforce the reporting requirements of the Residents and Contractors as provided in any agreements.

- i. 1512 reporting is due to OEP on the 5th of each month for the month prior.
 - ii. DOE milestone and metric reporting is due to OEP on the 10th of each month for the month prior.
 - iii. Additional reporting metrics from DOE may be required.
 - e. Provide such training or create such documents as is necessary to secure satisfactory performance of duties and responsibilities as outlined in this Agreement.
 - f. Monitor the Residents and Contractors for compliance with their respective agreements and all pertinent requirements referenced herein. This shall include conducting site inspections and compliance audits, randomly of at least 5% of rebated projects, as well as audits in response to potential conflicts identified by PUC, OEP, OES, DOE, or OMB.
 - g. When applicable, ensure that the National Environmental Policy Act, National Historic Preservation Act and all other applicable ARRA regulations are met by grantees. Any project that may trigger NEPA must first be approved by OEP and DOE.
 - h. Submit copies of published articles and events highlighting this program with DOE milestones and metrics reporting.
 - i. Ensure that reasonable access is provided to OEP, OES, DOE, and OMB for all administrators, vendors, facilities, work sites, employees of the contractor(s), financial or other records, and assistance to ensure the safety and convenience for the performance of site visits and evaluations.
 - j. Ensure that activities to be undertaken in connection with the Project shall comply with all applicable federal, state, and local design standard regulations, safety, energy, and construction codes.
 - k. PUC shall have an OMB circular A-133 audit performed in any fiscal year in which it expends more than \$500,000 total in all federal funding.

8. Federal Compliance

PUC shall comply, and shall require any Contractor or Vendor, to comply with the following federal and state laws and all applicable standards, rules, orders, or regulations issued pursuant thereto:

- a. The Copeland "Anti-Kickback" Act, as amended (118 USC 874) as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- b. The Flood Disaster Protection Act of 1973 (PL 93-234), as amended, regulations issued pursuant to that act, and Executive Order 11985.
- c. The National Environmental Policy Act of 1969 (PL 90-190); the National Historic Preservation Act of 1966 (80 Stat 915, 116 USC 470); and Executive Order No. 11593 of May 31, 1971, as specified in 24 CFR 58.
- d. The Clean Air Act, as Amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.
- e. The NH State Energy Code (2009 International Energy Conservation Code, as adopted).
- f. The NH State Life Safety Code (RSA 155:1) and rules of the NH State Fire Marshal.
- g. The Recovery and Reinvestment Act of 2009, Public Law 111-5 ("Recovery Act" or "Act") and applicable standards, rules orders, regulations and guidelines issued pursuant thereto, as amended from time to time and detailed in Exhibit C of this Agreement.

9. Agreement with Contractors or Vendors:

If PUC enters into an Agreement with Contractors or Vendors to be funded by Project funds, OEP reserves the right to approve the Agreement.

- a. PUC shall cause all applicable provisions of this Agreement to be inserted in all Contractor or Vendor Agreements, contracts and subcontracts (if any) for any work or Project Activities covered by this Agreement so that the provisions will be binding on each Contractor or Vendor; provided, however, that the foregoing provisions shall not apply to contracts for standard commercial supplies or raw materials.

- b. PUC shall take such action with respect to any such Agreement, contract or subcontract as the State, or, where applicable, the United States, may direct as a means of enforcing such provisions, including sanctions for noncompliance.

10. OEP Requirements:

OEP shall perform the following tasks as prime recipient of the DOE grant:

- a. Respond in a reasonable and timely manner to all requests for clarification or program modification from PUC in order to ensure the success of the Project and the distribution of all funds prior to April 30, 2012.
- b. Provide PUC with clear and complete guidance on the data to be collected and reported, including customized reporting forms, and that may be amended from time to time.
- c. Have the right to participate in the selection of projects and review records of applications submitted whether funded or not.
- d. Have the right to inspect all project sites, interview workers and ensure that all regulations are being met. Have the right to inspect and monitor financial records and transactions.
- e. Collaborate with PUC in efforts to publicize the program.
- f. Reimburse PUC for costs incurred for administrative and program costs on a monthly basis.
- g. File form 1512 reports in a timely manner with OES, federalreporting.gov and any other agency/department to whom it is required to report.
- h. File reports with DOE as required.

11. Records and Accounts: Access

During the performance of the Project Activities and for a period of three (3) years after the Completion Date or the date of the final audit approval by OEP, whichever is later, PUC shall keep, and shall require any Resident and Contractor to keep, the following records and accounts:

- a. Records of Direct Work: Detailed records of all direct work performed by its personnel under this Agreement.
- b. Fiscal Records: Books, records, documents and other statistical data evidencing, and permitting a determination to be made by OEP of all project costs and other expenses incurred by PUC and all income received or collected by PUC, during the performance of the project activities. The records shall be maintained in accordance with generally acceptable accounting procedures and practices, and which sufficiently and properly reflect all such costs and expenses, and shall include, without limitation, all ledgers, books, audits, records and original evidence of costs such as purchase requisitions and orders, invoices, vouchers, bills, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls or other records requested or required by OEP.
- c. Contractor and Subcontractor Records: PUC shall, and where applicable, Resident and Contractor shall, establish, maintain and preserve property management, project performance, financial management and reporting documents and systems, or such other books, records, and other data pertinent to the project as the OEP may require. Such records shall be retained for a period of three (3) years following completion of the project and receipt of final payment by PUC, or until an audit is completed and all questions arising are resolved, whichever is later.

12. Termination: Remedies

- a. Inability to Perform: Termination by PUC. As a result of causes beyond its control, and notwithstanding the exercise of good faith and diligence in the performance of its obligations hereunder, if it shall become necessary for PUC to terminate this Agreement, PUC shall give OEP thirty (30) days advance written notice of such termination, in which event the Agreement shall terminate at the expiration of said thirty (30) days.
- b. Termination Without Default. In the event of termination without default and upon receipt, acceptance and approval by OEP of the Termination Report, as referenced in the General Provisions, PUC shall receive payment for all Project Costs incurred in the performance of Grant Activities completed up to and including the date of termination and for which payment had not previously been made including, but not limited to, all reasonable expenses incurred in the preparation of the Termination Report; provided, however, that in the event that any payments have been made hereunder in excess of Project Costs incurred up to and including

the date of termination of the Agreement, OEP shall offset any payments to be made hereunder against such payments, and if applicable, PUC shall refund to OEP the amount of any excess funds it retains after such offset within 30 days of termination not to surpass April 30, 2012.

- c. Termination for Default. In the event of termination for default or other violation of Project requirements, OEP shall, upon receipt, acceptance and approval of the Termination Report submitted by PUC, pay PUC for Project Costs incurred up to and including the date of termination (subject to off-set against funds paid to PUC hereunder and to the refund of any excess funds); provided, however, that in such event the amount of such payment shall be determined solely by OEP; and provided, further, that in no event shall the making of any such payments relieve PUC of any liability for damages sustained or incurred by OEP as a result of PUC's breach of its obligations hereunder, or relieve PUC of responsibility to seek return of Grant Funds from any Subrecipient or Beneficiary where applicable.
- d. Limitation on PUC Liability for Subgranted Funds. Notwithstanding anything in this Agreement to the contrary and absent the presence of fraud or negligence on the part of PUC in enforcing its rights and obligations under the terms of any Subrecipient agreement, the sole obligation of PUC with respect to the return of Grant Funds, in the event of default on a grant condition or other termination of the Project or event requiring return of Grant Funds, shall be to make a good faith effort to return to the State of New Hampshire all grant funds paid to Residents through PUC. PUC shall make good faith efforts to enforce the legal obligations entered into with the Residents as provided herein, to call upon the collateral held by itself or others, and exercise due diligence in its efforts in bringing about the satisfaction of the grant obligations and, having done so, it shall not be required to look to any other funds to recoup grant funds not recovered from the Residents.
- e. Where the Agreement is terminated or the Project is otherwise terminated due to default, inability to perform, or reason other than project completion and grant funds are required to be returned by PUC, the disposition of grant funds to be returned shall be determined solely by OEP.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Office of Energy and Planning

By: Joanne O. Morin
Joanne O. Morin
Director

Public Utilities Commission

By: Thomas B. Getz
Thomas B. Getz
Chairman

Approved as to form, execution, and substance
OFFICE OF THE ATTORNEY GENERAL

By: Evan Mulholland
Assistant Attorney General
Cheryl R. [Signature], Assistant Atty. Gen.
for PUC



NHRECOVERY
putting new hampshire to work



April 14, 2010

**Memorandum of Agreement
between
Office of Energy and Planning
and
Public Utilities Commission**

- Exhibit A - Project Costs: Method and Terms of Payment -

1. Project Title:

American Recovery and Reinvestment Act - State Energy Programs – Expanded Renewable Energy Program
– Residential Central Pellet Heating System Rebate

2. Project Costs: Payment Schedule: Review by OEP:

Costs: The following terms shall apply to this agreement:

- a. "Project Costs" shall mean all reimbursable costs, including administrative costs, incurred by a Subcontractor or Vendor in performance of Project Activities. Project costs include, but are not limited to: record keeping, reporting, audits, and oversight of Project installation, monitoring, verification, and compliance with all federal, state, and local laws, rules, and regulations and this contract.
- b. "Administrative Costs" shall mean all expenses directly or indirectly incurred by PUC in the administration of the Project as determined by OEP to be eligible and allowable for payment in accordance with the approved Project budget (Attachment III) and cost standards set forth in OMB Circular A-87 and 2 CFR Part 225 and as revised from time to time.
- c. The PUC may take up to 10% of this award for administrative costs and/or to promote the program. Administrative coordination includes development, marketing, and delivery of the program, issuance of rebates, and submittal of monthly and quarterly reports to OEP for state and federal requirements.
- d. Payment of Project Costs: Subject to the terms and conditions of this agreement, OEP agrees to pay PUC all Project and Administrative Costs, provided, however, that in no event shall the total of all payments made by OEP pursuant to this Agreement exceed the Grant Amount as set out in Paragraph 3 of the Memorandum of Agreement, and provided further that all Project Costs shall have been incurred prior to the Completion Date as noted in Paragraph 2 of the MOA.
- e. Review by OEP: Review by OEP; Disallowance of Costs: At any time during the performance of the Project Activities, and upon receipt of the monthly and quarterly Progress Reports, Closeout Report, or Audited Financial Report, OEP may review all Project Costs incurred by PUC or any Subcontractor or Vendor and all payments made to date. Upon such review, OEP shall disallow any items of expense which are not determined to be allowable or are determined to be in excess of actual expenditures, and shall, by written notice specifying the disallowed expenditures, inform OEP of any such disallowance. If OEP disallows costs for which payment has not yet been made, it shall refuse to pay such costs. If payment has

been made with respect to costs which are subsequently disallowed, OEP may deduct the amount of disallowed costs from any future payments under this Agreement or require that PUC refund to OEP the amount of the disallowed costs.

3. Method and Terms of Reimbursement for Project Costs:

When Project Funds May Be Released:

- a. PUC will submit an itemized monthly invoice on an OEP-supplied form with supporting documentation to OEP for Project and Administrative Costs incurred.
- b. OEP will reimburse PUC from the total contracted amount not to exceed \$500,000.00.
- c. OEP shall not disburse any funds for the purposes of this Project until such time as all agreements specified in the MOA and any other agreements or documents specified pursuant to this Agreement are fully executed and received, and where applicable are reviewed and approved in writing by OEP.

4. Timing of Payments:

Within thirty (30) days of the receipt by OEP of requests for reimbursement from PUC specifying all costs incurred, OEP agrees to reimburse PUC for costs.

- a. Except that reimbursement may be withheld until OEP determines that a particular project activity or portion of the project activity hereunder has been satisfactorily completed.
- b. Payments may be withheld if required satisfactory reporting has not been submitted to OEP.
- c. Disbursement of funds by OEP does not constitute acceptance of any item as an eligible cost.
- d. Until all Project and Administrative Costs have been reviewed and determined to be allowable costs.
- e. Required Documentation for Disbursement of Grant Funds:
 - i. Reimbursement requests for all Project, Administrative, and Delivery Costs shall be accompanied by proper supporting documentation in the amount of each requested disbursement along with a payment request form as supplied by OEP, which shall be completed and signed by PUC. Documentation may include invoices for supplies, equipment, services, contractual services, and, where applicable, a report of salaries paid or to be paid.
- f. Limitations on Use of Funds:
 - i. Funds for this program are to be used in a manner consistent with the American Recovery and Reinvestment Act – State Energy Program – Expanded Renewable Energy Program, as approved by the U.S. Department of Energy and by the NH Office of Energy and Planning.
 - ii. Project funds may not, without advance written approval by OEP, be obligated prior to the Effective Date or subsequent to the Completion Date of the Project period. The funding assistance authorized hereunder shall not be obligated or utilized for any activities requiring a release of funds under the Environmental Review Procedure for the American Recovery and Reinvestment Act – State Energy Program until such release is issued in writing by OEP.

5. Agreements and documents may include:

- a. A Contractor Agreement, as applicable;
- b. A Vendor Agreement, as applicable;
- c. Documentation of other committed leveraged funds or additional financing;
- d. Copies of required certificates of insurance from all parties to this agreement;
- e. Engineering, construction, consultant, or other contracts;



NHRECOVERY
putting new hampshire to work



Exhibit B

Special Provisions American Recovery and Reinvestment Act Standard Terms: American Recovery and Reinvestment Act - State Energy Program

Notwithstanding any provision of this Agreement to the contrary, the following terms and conditions shall govern and take precedence over any conflicting provision in this Agreement.

1. The Contractor/Grantee shall obtain a DUNS number (www.dnb.com), and register with the Central Contractor Registry (CCR, www.ccr.gov). The Contractor/Grantee shall require any subcontractor/subgrantee to obtain a DUNS number.

The Contractor/Grantee agrees to advertise any subcontract/subgrant opportunity arising from this contract/grant to be paid for with American Recovery and Reinvestment Act funds on the State of New Hampshire, Department of Administrative Services "Bidding Opportunities" web site, by completing a bid description form available at: http://www.sunspot.admin.state.nh.us/statecontracting/Documents/bid_form.doc and submitting it to the Contracting Officer or Grant Manager who will submit the form to purchweb@nh.gov. The bid description form may also be obtained in person from the Office of Economic Stimulus at the State House Annex, Room 202-A, 25 Capitol Street, Concord, New Hampshire 03301, by U.S. mail to 107 North Main Street, State House – Room 208 Concord, New Hampshire 03301. Requests can be made by phone, (603) 271-2121, or by email, NHOES@nh.gov.

2. The Contractor/Grantee, upon entering into any subcontract/subgrant to be paid for with American Recovery and Reinvestment Act funds received through this contract/grant for the purpose of carrying out this agreement, agrees to provide the Contracting Officer/Grant Manager and the Office of Economic Stimulus redacted PDF or paper copies of the executed sub-contracts/sub-grants. A copy may be submitted by e-mail to NHOES@nh.gov or by U.S. Mail to 107 North Main Street, State House – Room 208 Concord, New Hampshire 03301 or by delivery to the Office of Economic Stimulus, State House Annex, Room 202-A, 25 Capitol Street, Concord, New Hampshire 03301. The copies provided to the State shall have any proprietary or non-public information, the disclosure of which would constitute an invasion of privacy, redacted. All contracts/grants to individuals and those for amounts of less than \$25,000 shall be reported in the aggregate by written narrative in a manner that protects the privacy interests of any individual recipient. The written narrative shall include the purpose of the sub-contract(s)/grant(s), the aggregate amount of the sub-contract(s)/grant(s), and an estimate of the jobs created and the jobs retained by job type, if any, as a result of the sub-contract(s)/grant(s). All contracts/grants awarded using American Recovery and Reinvestment Act funds will be posted on the NH Recovery web site and may be posted on the federal Recovery.gov web site.

3. The Contractor/Grantee shall comply, and require any subcontractor/subgrantee to comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Contractor/Grantee and subcontractor/subgrantee, including, but not limited to:

Exhibit B
Initials *[Signature]*
Date *3/2/10*
Page 1 of 18

a. The Contractor/Grantee shall comply with, and shall require any subcontractor/subgrantee to comply with, applicable provisions of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"), and applicable federal, rules, orders, regulations and guidelines issued pursuant thereto, as amended from time to time, including, but not limited to:

Section 1512 Reporting:

ARRA imposes transparency, oversight and accountability requirements, including, without limitation, the reporting requirements in the Jobs Accountability Act in Section 1512.

Definitions. As used in this Section 1512 reporting clause, the following terms have the meaning set forth below:

Contract: means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications, grants, and cooperative agreements.

First-tier subcontract: means a subcontract awarded directly by a prime contractor whose contract is funded by ARRA.

Jobs created: means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers contractor/grantee positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor/grantee. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each month.

Jobs retained: means an estimate of those previously existing filled positions that are retained as a result of funding by ARRA. This definition covers contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each month.

All jobs created (FTEs) added to all jobs retained (FTEs) should equal the total jobs (FTEs) being paid for with the ARRA contract/grant funds received pursuant to this Agreement by the contractor/grantee. Stated otherwise, all jobs (FTEs) being paid for with funds provided by this agreement minus all jobs created (FTEs) should equal all jobs retained (FTEs). A job cannot be reported as both created and retained.

Total compensation: means the cash and noncash dollar value earned by the executive during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

- (1) Salary and bonus.
- (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation, which is not tax-qualified.
- (6). Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

The Contractor/Grantee shall provide the data needed for Section 1512 reporting monthly in the format defined by the Contracting Officer/Grant Manager. The report format may be changed over time if the federal government issues guidance or establishes requirements for a different format.

Section 1512, at a minimum, requires the following data from the Contractor/Grantee:

- (1) An evaluation of the completion status of the project or activity;
- (2) An estimate of the number of jobs created by the project or activity by job type;
- (3) An estimate of the number of jobs retained by the project or activity by job type;
- (4) Total hours of employees working on the project or activity (subtotal by jobs created and existing jobs);
- (5) Total wages for employees working on the project or activity (subtotal by jobs created and existing jobs);
- (6) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment; and
- (7) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

The Contractor/Grantee agrees to provide the following data required by the Federal Funding Accountability and Transparency Act, 31 U.S.C. 6101, for both the contractor/grantee and any subcontractor(s)/subgrantee(s):

- (1) The name of the entity receiving the award (must match the name used for establishing the entity's DUNS number and Contractor Central Registry);
- (2) The amount of the award;
- (3) Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance Number (where applicable), program source, and an award title descriptive of the purpose of each funding action;
- (4) The location of the entity receiving the award and the primary location of performance under the award, including the city State, congressional district, and county;
- (5) The DUNS number and Central Contractor Registry numbers of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity; and
- (6) Any other relevant information specified by the Office of Management and Budget ("OMB").
Currently no further information is being required by OMB.

This contract requires the Contractor/Grantee to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to the last day of each month, are due no later than the fifth day of each month.

The Contractor/Grantee shall report the following additional information, to the contracting officer or grant manager identified in this contract/grant in an Excel spreadsheet or paper report in the form provided by the State. The State agrees to provide the Contractor/Grantee with a report form that has pre-filled the data elements known to the State:

- (1) The Government contract and order number, as applicable;
- (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the state;
- (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar month;
- (4) Program or project title, if any;
- (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure;
- (6) An assessment of the contractor's/grantee's progress towards the completion of the overall purpose and expected outcomes or results of the contract/grant (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract/grant (or portion thereof) funded by the Recovery Act;
- (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar month and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide:
 - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (ii) An estimate of the number of jobs created by job type and a separate estimate of the number of jobs retained by job type, by the contractor/grantee and separately by any subcontractor(s)/subgrantee(s), in the United States and outlying areas. A job cannot be reported as both created and retained.
- (8) If the Contractor/Grantee meets the criteria set forth below, the names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded. This requirement applies only if:
 - (i) In the Contractor's/Grantee's preceding fiscal year, the Contractor/Grantee received—
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (9) For subcontracts/subgrants valued at less than \$25,000 or any subcontracts/subgrants awarded to an individual, or subcontracts/subgrants awarded to a subcontractor/subgrantee that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts/subgrants awarded in the month and their aggregate total dollar amount.

(10) For any first-tier subcontract/subgrant funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor/subgrantee to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the monthly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

- (i) Unique identifier (DUNS Number) for the subcontractor/subgrantee receiving the award and for the subcontractor's/subgrantee's parent company, if the subcontractor/subgrantee has a parent company;
- (ii) Name of the subcontractor/subgrantee;
- (iii) Amount of the subcontract/subgrant award;
- (iv) Date of the subcontract/subgrant award;
- (v) The applicable North American Industry Classification System (NAICS) code;
- (vi) Funding agency;
- (vii) A description of the products or services (including construction) being provided under the subcontract/subgrant, including the overall purpose and expected outcomes or results of the subcontract/subgrant;
- (viii) Subcontract/subgrant number (the contract number assigned by the prime contractor);
- (ix) Subcontractor's/subgrantee's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable;
- (x) Subcontract/subgrant primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable;
- (xi) If the Contractor/Grantee meets the criteria set forth below, the names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded. This requirement applies only if;
 - (A) In the subcontractor's/subgrantee's preceding fiscal year, the subcontractor/subgrantee received:
 - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

(11) The contractor/grantee shall require the subcontractor/sub-grantee to register with the federal government Central Contractor Registration (CCR) database at www.ccr.gov.

Inspection:

The Contractor/Grantee agrees that the Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of the State of New Hampshire shall have access to and the right to:

- (1) Examine any of the Contractor's/Grantee's or any subcontractor's/subgrantee's records that pertain to and involve transactions relating to this contract/grant or a subcontract/subgrant hereunder; and
- (2) Interview any officer or employee regarding such transactions. The Contractor/Grantee shall insert a clause containing all the terms of this section, including this paragraph, in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer/Grant Manager under the Government prime contract.

Whistleblower Protection Notice:

ARRA Section 1553 establishes whistleblower protections that apply to the contractor/grantee, and any subcontractor/subgrantee pursuant to this agreement. The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). The Contractor shall include the substance of this clause including this paragraph in all subcontracts. The posted notice required by this clause shall include contact information to report fraud, waste, or abuse to the Inspector General of the federal department that is the source of the ARRA funds for this contract/grant, fraud to the New Hampshire Attorney General's Office Criminal Bureau, and waste or abuse to the Office of Economic Stimulus. A notice for this purpose is available at <http://www.nh.gov/recovery/>.

4. The Contractor/Grantee agrees to comply with the Emergency Economic Stabilization Act of 2008 requirements (as amended in Section 1608 of the Recovery Act), 12 U.S.C. 5217(b), which provide for the inclusion and utilization, to the maximum extent practicable, of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in 12 U.S.C. 1441a(r)(4) of this title), and individuals with disabilities and businesses owned by individuals with disabilities;

5. The Contractor/Grantee agrees to comply with the National Environmental Policy Act of 1969 (P.L. 91-190) requirements in Section 1609, including requirements for plans and projects to be reviewed and documented in accordance with those processes; and Executive Order 11514; notification of violating facilities pursuant to Executive Order 11738; protection of wetlands pursuant to Executive Order 11990 and State law; evaluation of flood hazards in floodplains in accordance with Executive Order 11988; assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 *et seq.*); conformity of Federal Actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 *et seq.*); protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205);

6. The Contractor/Grantee agrees to comply with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance, and all State and federal anti-discrimination statutes including but not limited to: Title VI of the Civil Rights Act of 1964, which prohibits

discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; the Age Discrimination Act of 1975 as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; Executive Order 11246; any other nondiscrimination provisions in ARRA, and any program-specific statutes with anti-discrimination requirements; as well as generally applicable civil rights laws including, but not limited to, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*; the Americans With Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, relating to employment rights and preventing employment discrimination; the Equal Educational Opportunities Act, 20 U.S.C. § 1703, prohibiting denial of an equal educational opportunity to an individual on account of his or her race, color, sex, or national origin; the Age Discrimination in Employment Act, 29 U.S.C. § 634, prohibiting age discrimination against persons 40 years of age or older; the Uniform Relocation Act, 42 U.S.C.A. § 4601 *et seq.*, establishing uniform policies to compensate people displaced from their homes or businesses by state and local government programs; and New Hampshire Revised Statutes Annotated Chapter 354-A, prohibiting certain discrimination in employment, in places of public accommodation and in housing accommodations.

7. The Contractor/Grantee agrees to comply with 40 U.S.C. §§ 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. §§ 51-58, Anti-Kickback Act of 1986; 41 U.S.C. § 265 and 10 U.S.C. § 2409 relating to whistleblower protections; the Hatch Act, 5 U.S.C. §§ 1501-1508 and 7324-7328, which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds; and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 401 *et seq.*), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

8. The Contractor/Grantee agrees to comply with 31 U.S.C. § 1352, relating to limitations on the use of appropriated funds to influence certain Federal contracts and New Hampshire Revised Statute Annotated 15:5 which prohibits to use of funds appropriated or granted by the State for lobbying or electioneering.

Limitations on the use of federal Grant or Contract Funds for Lobbying:

a. The law prohibits Federal funds from being expended by the recipient or any lower tier sub-recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement. The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement is also covered.

b. Federal-aid contractors, consultants, and grant recipients as well as lower tier subcontractors, subconsultants, and grant sub-recipients are also subject to the lobbying prohibition.

c. To assure compliance, for any contract or grant, including any sub-contract or grant exceeding \$100,000 the contractor/grantee and sub-contractor/sub-grantee must submit and update as required a "Disclosure of Lobbying Activities" form, (OMB Standard Form LLL), available at <http://www.nh.gov/recovery/library/index.htm>.

1. During the grant or contract period, contractors/grantees and sub-contractors/sub-grantees must file disclosure form (Standard Form LLL) at the end of each calendar year in which there occurs any

event that requires disclosure or that materially affects the accuracy of the information contained in any previously filed disclosure form.

2. Lower tier certifications should be maintained by the next tier above (i.e. prime contractors/grantees will keep the subcontractors/subgrantee's certification on file, etc.)

3. Standard Form LLL will be provided during contract execution for utilization during the required contract period.

Funds appropriated under the ARRA can, under certain circumstances, be used for grants to nonprofit organizations. However, grants cannot be awarded to a nonprofit organization classified by the Internal Revenue Service as a 501(c)(4) organization unless that organization certifies that it will not engage in lobbying activities, even with their own funds (see Section 18 of the Lobbying Disclosure Act, 2 U.S.C.A § 1611).

9. The Contractor/Grantee agrees to comply with The National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), Executive Order 11593 (identification and protection of historic properties) and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 *et. seq.*); and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes.

10. The Contractor/Grantee, and any subcontractor/subgrantee, shall immediately refer to an appropriate inspector general within the U.S. Department of Department of Energy (DOE), Office of the Inspector General, and to the Public Integrity Unit of the New Hampshire Attorney General's Office (603) 271-3671, any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or subgrantee, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

The Contractor/Grantee, and any subcontractor/subgrantee agree to maintain at each worksite and location of work funded by this Agreement a poster describing how to report fraud, waste, or abuse of ARRA funds. A model poster for this purpose, which also incorporates the whistleblower notice requirements, is available at <http://www.nh.gov/recovery/>.

11. Any funding provided to the Contractor/Grantee pursuant to the Recovery Act that is supplemental to an existing grant is one-time funding.



12. The Recovery Act funds are not eligible for costs incurred prior to the date of obligation.

13. The Contractor/Grantee agrees that in compliance with ARRA section 1604 none of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

14. The Contractor/Grantee agrees to establish and maintain a proper accounting system in accordance with generally accepted accounting standards.

To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR 215, subpart ____ 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, the Contractor/Grantee agree to maintain records that identify adequately the source and application of Recovery Act funds.

For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as

Exhibit B
Initials 
Date 
Page 8 of 18

separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General, the Government Accountability Office, and the State of New Hampshire.

Where applicable, Recipients will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

15. Debarment. The Contractor/Grantee by signing this Agreement certifies that the Contractor/Grantee, including all principals, is not currently under debarment or suspension and has not been under debarment or suspension within the past three years, as required by 49 CFR 29.510. The Contractor/Grantee agrees to notify the Contracting Officer/Grant Manager within 30 days of being debarred or suspended from federal government contracts.

16. The Contractor/Grantee certifies by entering into this contract that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project described in this Agreement.

17. The Contractor/Grantee agrees to comply with the prohibitions on the giving of gifts to public officials established by RSA chapter 15-B.

18. The Contractor/Grantee agrees to post any job openings resulting from this contract/grant on the Department of Employment Security NHWorks Job Match System, available at <https://nhworksjobmatch.nhes.nh.gov/>.

19. The Contractor/Grantee shall cause the provisions of this Exhibit B of the General Provisions to be inserted in all subcontracts for any work or project activities covered by this Agreement so that the provisions will be binding on each subcontractor or subgrantee. The Contractor/Grantee shall take such action with respect to any subcontract as the State, or, the United States, may direct as a means of enforcing such provisions, including without limitation, sanctions for noncompliance.

TERMS APPLYING ONLY TO SPECIFIC CONTRACTS/GRANTS

Use It or Lose It and Report It or Lose It Requirement. This contract/grant is being funded by funds received by the State of New Hampshire pursuant to ARRA. Federal law provides in part that in using funds made available under ARRA for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of ARRA. Federal guidance also directs that all ARRA funds be put to work in the community promptly. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit. ARRA imposes enhanced levels of accountability and transparency.

Therefore, prompt and accountable performance of this contract/grant is OF THE ESSENCE. Thus, for all obligations of the contractor/grantee, time is of the essence. In addition to the clauses set forth in the Memorandum of Agreement, the State reserves the right to terminate this contract/grant and to award a new contract/grant to a new contractor/grantee for any unearned portion of the contract price if the contractor/grantee fails to perform according to the timeline promised, fails to comply with accountability requirements in this Agreement and ARRA, or fails to file monthly reports on time.

The rest of this page is intentionally left blank.

Buy American:

The Contractor/Grantee agrees to comply with the Buy American requirements in Section 1605 of ARRA. Unless this requirement has been waived by a competent federal authority pursuant to 2 CFR 176.140, none of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), the definition of "domestic manufactured construction material" requires manufacture in the United States but does not include a requirement with regard to the origin of the components. Production in the United States of the iron or steel used as construction material requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured construction material. There is no requirement with regard to the origin of components or subcomponents in other manufactured construction material, as long as the manufacture of the construction material occurs in the United States.

As used in this "Buy American" term and condition:

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been:

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

A federal law, commonly known as the "Buy American Act," 41 U.S.C.A. § 10A-10D, exists as a separate and additional legal limitation on the use of ARRA federal funds. The Contractor/Grantee agrees to use only domestic unmanufactured construction material, as required by the Buy American Act.

The Contractor/Grantee acknowledges to and for the benefit of the State of New Hampshire that it understands the goods and services under this Agreement are being funded with monies made available by ARRA and such law contains provisions commonly known as "Buy American;" that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor/Grantee hereby represents and warrants to and for the benefit of the State that (a) the Contractor/Grantee has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project funded by this agreement will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a

Exhibit B
Initials
Date
Page 11 of 18

waiver of the requirements has been approved by federal authorities, and (c) the Contractor/Grantee will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the State. Notwithstanding any other provision of the Agreement, any failure to comply with this paragraph by the Contractor/Grantee shall permit the State to recover as damages against the Contractor/Grantee any loss, expense or cost (including without limitation attorney's fees) incurred by the State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State).

The Contractor (or the Grantee with any contract issued pursuant to the grant agrees to require a certification from the Contractor) agrees to certify compliance with a certification in the following form:

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the bid solicitation and the provisions of ARRA Section 1605, the Contractor certifies that the bid on which this contract is based reflects the Contractor's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
2. Verification of U.S. Production: The Contractor certifies that all components contained in the bid solicitation that are American-made have been so identified, and the Contractor agrees that it will provide reasonable, sufficient, and timely verification to the State of the U.S. production of each component so identified.

The rest of this page is intentionally left blank.

Prevailing Wage Requirements:

The Contractor/Grantee agrees to comply with the Wage Rate Requirements in Section 1606 of ARRA. In accordance with 2 C.F.R. §176.190, the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a) is set forth below:

29 CFR §5.5(a):

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, that such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where the poster and wage determination can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract, shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The New Hampshire Office of Energy and Planning (OEP) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other State contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of

the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the OEP and **New Hampshire Public Utilities Commission** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the OEP and **New Hampshire Public Utilities Commission**. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the OEP and **New Hampshire Public Utilities Commission** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the OEP and **New Hampshire Public Utilities Commission** the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code or New Hampshire Revised Statutes Annotated Chapter 641.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State of New Hampshire or the federal Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the government agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of

Section 2 – Basic Principles and Requirements of Recovery Act Recipient Reporting

2.1 What recipient reporting is required in Section 1512 of the Recovery Act?

Section 1512 of the Recovery Act requires reports on the use of Recovery Act funding by recipients no later than the 10th day after the end of each calendar quarter (beginning the quarter ending September 30, 2009) and for the Federal agency providing those funds to make the reports publicly available no later than the 30th day after the end of that quarter. Aimed at providing transparency into the use of these funds, the recipient reports are required to include the following detailed information:

- Total amount of funds received; and of that, the amount spent on projects and activities;
- A list of those projects and activities funded by name to include³:
 - Description
 - Completion status
 - Estimates on jobs created or retained;
- Details on sub-awards⁴ and other payments.

Further information on the details of these reports is outlined in this Section, and the specific data elements to be reported on are contained in the data dictionary included in the document entitled, *Recipient Reporting Data Model*. This document will be published on OMB's website and www.Recovery.gov as supplemental materials to this Guidance.

2.2 Who is required to report under the Recovery Act?

The prime recipients of all programs identified in the list of Federal programs subject to Section 1512 of the Recovery Act in the supplemental materials to this Guidance are responsible for reporting the information required by Section 1512 of the Act and as provided in this Guidance. Prime recipients may choose to delegate certain reporting requirements to sub-recipients, as described in Section 2.3.

The **prime recipients** are non-Federal entities that receive Recovery Act funding as Federal awards in the form of grants, loans, or cooperative agreements directly from the Federal government. Federal agencies are not considered prime- or sub-recipients. The movement of Recovery Act funds between Federal agencies is not subject to Section 1512 reporting.

Payments made by prime recipients of Federal award dollars can be classified into two categories – (i) payments to sub-recipients and (ii) payments to vendors⁵. The prime

³ Section 1512(c)(3)(E) requires that State and local governments making infrastructure investments must provide information on the purpose, total costs, rationale for the infrastructure project and contact information of an individual.

⁴ Section 1512(c)(4) requires details on the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282).

⁵ Refer to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations for additional information.

recipient is responsible for reporting data on payments made to both sub-recipients and vendors. However, as noted in Section 2.3, the reporting requirements for payments made to sub-recipients are not the same as the reporting requirements for payments made to vendors.

A **sub-recipient** is a non-Federal entity that expends Federal awards received from another entity to carry out a Federal program but does not include an individual who is a beneficiary of such a program.⁶

Specifically, sub-recipients are non-Federal entities that are awarded Recovery funding through a legal instrument from the prime recipient to support the performance of any portion of the substantive project or program for which the prime recipient received the Recovery funding. Additionally, the terms and conditions of the Federal award are carried forward to the sub-recipient. It is possible that a sub-recipient for one award may also be a prime recipient of another Federal award provided directly from the Federal Government.

Under this Guidance, sub-recipients that receive all or a portion of Recovery funding from a prime recipient may be delegated the responsibility by the prime recipient to report information into the central reporting solution at www.FederalReporting.gov. This Guidance does not provide for such a delegation to vendors. The policy regarding delegation of reporting by the prime recipient is further described in Section 2.3 of this Guidance.

A **vendor** is defined as a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program.⁷ Prime recipients or sub-recipients may purchase goods or services needed to carry out the project or program from vendors. Vendors are not awarded funds by the same means as sub-recipients and are not subject to the terms and conditions of the Federal financial assistance award.

The characteristics of a vendor that make it distinct from a sub-recipient are summarized below. A vendor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

⁶ Refer to OMB Circular A-133 for additional information and definitions. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, as codified in 2 CFR 215, provides further clarification on the definition of a sub-recipient.

⁷ Refer to OMB Circular A-133 for additional information and definitions.

In general, individuals receiving benefit payments or other types of Federal awards are excluded from reporting information under Section 1512 of the Act. In certain cases, individual loan recipients (as either prime- or sub-recipients) may be required to comply with Section 1512 reporting requirements — for example, if the recipient is a sole proprietorship. Individuals other than sole-proprietorships are not subject to Section 1512 reporting requirements, for example individuals receiving direct loans for purchase or refinancing of a single family home.

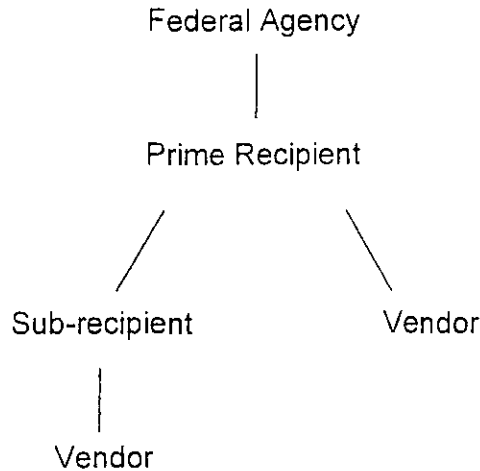
The relevant Federal agency managing a loan program with Recovery Act dollars must issue supplemental guidance detailing instances in which individual recipients of loan funds (including 100 percent guaranteed loans financed through the Federal Financing Bank) are required to meet the requirements of Section 1512 and this Guidance.

The Federal agency or prime recipients awarding funds to individuals will report the aggregated amounts disbursed to individuals. Section 2.4 of this Guidance provides further instruction on aggregate reporting for prime- or sub-recipients.

As mentioned in Section 1.3, a list of Federal programs subject to the Recovery Act recipient reporting requirements will be published on OMB's website and www.Recovery.gov as supplemental material to this Guidance. There are some Federal programs that received Recovery Act funds that do not appear on the list. These include mandatory programs, programs and accounts directly used in the operations of Federal agencies, programs contained in Division B of the Act, and other programs providing benefits to individuals, which are specifically not subject to the Section 1512 reporting requirements. The Federal agencies awarding funds for these programs will continue to report the amounts disbursed for these programs and this information will be available to the public on www.Recovery.gov.

2.3 What are the respective responsibilities of prime recipients and sub-recipients in meeting Section 1512 reporting requirements?

The accompanying illustration demonstrates the basic framework for prime recipient and sub-recipient reporting.



Prime Recipients:

The prime recipient is ultimately responsible for the reporting of all data required by Section 1512 of the Recovery Act and this Guidance, including the Federal Funding Accountability and Transparency Act (FFATA) data elements for the sub-recipients of the prime recipient required under 1512(c)(4). Prime recipients may delegate certain reporting requirements to sub-recipients, as described below. If the reporting is delegated to a sub-recipient, the delegation must be made in time for the sub-recipient to prepare for the reporting, including registering in the system. Further information on registration in the system is in Section 3.4 of this Guidance.

In addition, the prime recipient must report three additional data elements associated with any vendors receiving funds from the prime recipient for any payments greater than \$25,000. Specifically, the prime recipient must report the identity of the vendor by reporting the D-U-N-S number⁸, the amount of the payment, and a description of what was obtained in exchange for the payment. If the vendor does not have a D-U-N-S number, then the name and zip code of the vendor's headquarters will be used for identification. Vendors, as defined in this guidance, are not required to obtain a D-U-N-S number.

Sub-Recipients of the Prime Recipient:

The sub-recipients of the prime recipient may be required by the prime recipient to report the FFATA data elements required under 1512(c)(4) for payments from the prime recipient to the sub-recipient. The reporting sub-recipients must also report one data element associated with any vendors receiving funds from that sub-recipient. Specifically, the sub-recipient must report, for any payments greater than \$25,000, the identity of the vendor by reporting the D-U-N-S number, if available, or otherwise the

⁸ The Dun & Bradstreet, or D-U-N-S, number is explained in further detail in Section 3.5 of this Guidance.

name and zip code of the vendor's headquarters. Vendors are not required to obtain a D-U-N-S number. If a sub-recipient is not delegated the responsibility to report FFATA data elements for sub-awards from its prime recipients or any sub-recipient vendor information, the prime and sub-recipients must develop a process by which this information will be reported in sufficient time to meet the reporting timeframes outlined in Section 3.2.

Required Data:

The specific data elements to be reported by prime recipients and sub-recipients are included in the data dictionary contained in the *Recipient Reporting Data Model*. This document will be published on OMB's website and www.Recovery.gov as supplemental materials to this Guidance. Below are the basic reporting requirements to be reported on prime recipients, recipient vendors, sub-recipients, and sub-recipient vendors. Administrative costs are excluded from the reporting requirements. The basic reporting requirements below may contain multiple data elements as defined in the data dictionary.

Prime Recipient

1. Federal Funding Agency Name
2. Award identification
3. Recipient D-U-N-S
4. Parent D-U-N-S
5. Recipient CCR information
6. CFDA number, if applicable
7. Recipient account number
8. Project/grant period
9. Award type, date, description, and amount
10. Amount of Federal Recovery Act funds expended to projects/activities
11. Activity code and description
12. Project description and status
13. Job creation narrative and number
14. Infrastructure expenditures and rationale, if applicable
15. Recipient primary place of performance
16. Recipient area of benefit
17. Recipient officer names and compensation (Top 5)
18. Total number and amount of small sub-awards; less than \$25,000

Recipient Vendor

1. D-U-N-S or Name and zip code of Headquarters (HQ)
2. Expenditure amount
3. Expenditure description

Sub-Recipient (also referred to as FFATA Data Elements)

1. Sub-recipient D-U-N-S
2. Sub-recipient CCR information
3. Sub-recipient type

4. Amount received by sub-recipient
5. Amount awarded to sub-recipient
6. Sub-award date
7. Sub-award period
8. Sub-recipient place of performance
9. Sub-recipient area of benefit
10. Sub-recipient officer names and compensation (Top 5)

Sub-Recipient Vendor

1. D-U-N-S or Name and zip code of HQ

Example:

A Federal agency awards a \$1 million Recovery Act funded research grant to University A. University A conducts a portion of the research itself and uses \$200,000 of the Recovery Act funds to purchase scientific equipment from XYZ Corporation. University A sub-awards the remaining \$500,000 of the Recovery Act funds to University B to carry out additional research consistent with the mission of the underlying Federal program. University B uses \$50,000 of these funds to support research activities by purchasing scientific equipment from the 123 Corporation.

In this example, University A is the prime recipient and must report on all data elements required by Section 1512 of the Recovery Act and this Guidance related to the award received from the Federal agency. This includes:

- Information regarding the award to University A (associated with the *prime recipient* listed above) and includes:
 - Entity ID for University A (D-U-N-S)
 - Total \$ received by University A
 - Total \$ for projects/activities funded by University A
 - List of projects undertaken by University A
 - Estimates on jobs created or retained by University A, University B, and applicable vendors
 - Infrastructure Investment details, if applicable to University A activities
 - The identity of the XYZ corporation, as well as the amount and description of the purchase of scientific equipment
- Information regarding the sub-award to University B, including the FFATA data elements required under Section 1512(c)(4) (associated with the *sub-recipient* listed above) and includes the identity of the 123 corporation (*sub-recipient vendor* above).

University A has the option of delegating the responsibility to report the FFATA data elements and the identity of the 123 Corporation (*sub-recipient vendor* data elements) to University B for entering into www.FederalReporting.gov. There are no additional reporting requirements for any sub-awards to sub-recipients made by University B.

2.4 What are the relevant requirements for prime recipients reporting on sub-recipient payments of less than \$25,000 or to individuals?

Section 1512(c)(4) and this Guidance allows for prime recipients to aggregate reporting on 1) sub-awards less than \$25,000; 2) sub-awards to individuals; and 3) payments to vendors less than \$25,000. Prime recipients should provide a separate aggregate dollar total for each of the three categories.

As previously mentioned in this Guidance, it is important to note that while individual recipients of Recovery funds, either directly from a Federal agency or from a prime recipient, are not required to report into the centralized reporting solution themselves⁹, the Federal agency or prime recipient awarding those funds will report by aggregating the amounts disbursed to individuals.

2.5 How will recipient reporting be submitted?

The information reported by all prime recipients (and those sub-recipients to which the prime recipient has delegated reporting responsibility) will be submitted through www.FederalReporting.gov, the online Web portal that will collect all Recovery Act recipient reports. Prime recipients must enter their data no later than the 10th day after each quarter beginning on October 10, 2009. All data contained in each quarterly recipient report will be cumulative in order to encompass the total amount of funds expended to date. This means that reports due on October 10, 2009, will include funding from February 17, 2009 (the date the Act was enacted by Congress) through September 30, 2009. Each subsequent quarterly report will also be cumulative. In other words, the report due January 10, 2010, will include the data reported through September 2009 and be updated to include data that accumulated through December 2009. For example, October's report may have contained a project that was 25% completed through the end of September. If the project is completed another 25% by the end of December, on January 10, the prime recipient will report that the project is 50% completed.

Prime recipients and delegated sub-recipients will begin reporting the quarter in which an award is made to it. If awarded funds have not been received and/or expended by the prime recipients or delegated sub-recipients within the quarter the award is made or subsequent quarters, a "\$0" should be reported for the respective data elements.

2.6 What is the expectation for the reporting period ending June 30, 2009?

Prime recipients are required to collect and maintain all relevant information responsive to the reporting requirements outlined in Section 1512 of the Recovery Act and this

⁹ Sole proprietorships however are subject to the reporting requirements. See Section 1.4 for additional information.

well as the burden impact on the relevant recipient community before initiating such a requirement or option.

Federal agencies that determine that such a requirement is necessary will issue program-specific reporting guidance that is reviewed and approved by OMB before it can be effective.

2.9 How should recipients avoid “double counting” in their reports?

Prime recipients that decentralize reporting at the prime recipient level and/or delegate reporting responsibilities to sub-recipients must take special precautions to ensure coordinated reporting. The www.FederalReporting.gov recipient reporting solution will consider the last report submitted to be the final submission.

Decentralized reporting at the prime recipient level – In this scenario, the prime recipient does not establish a single point of entry for submitting required data to the www.FederalReporting.gov solution, but it allows for multiple parties at the prime recipient level to enter data. For example, a State may designate a variety of officials at different State departments or agencies to enter relevant information into www.FederalReporting.gov on the State’s behalf. In this case, it may be possible that two different State officials inadvertently create separate data records reporting on the same activity. The State recipient is responsible to design and implement a process that prevents this. While prime recipients may find it prudent to register multiple individuals to report in the event the principal designee is not available, it is incumbent on the reporting authority to ensure that report submission responsibility is clearly assigned.

Delegation by prime recipient to sub-recipient – As noted in Section 2.3 of this Guidance, the prime recipient has the option of delegating reporting responsibility to the sub-recipient for those data items that relate to sub-recipient activity. If this delegation is not widely and clearly communicated, as well as closely monitored, it may be possible for mistakes to occur whereas both the prime recipient and sub-recipient are reporting separately on the same activity. The prime recipient is responsible to design and implement a process that prevents this. At a minimum, the State must maintain an updated inventory of sub-recipient delegations and crosscheck all data records to make sure no reporting is occurring at the prime recipient level for instances where a delegation has occurred.

During the corrections phase of the data reporting process, in other words, after the initial submission on the 10th of the reporting month (See Section 3.2), additional risk for double counting emerges if multiple “users” attempt to correct the same record. Although it will not be possible in the www.FederalReporting.gov solution for a user to create an additional or new record as part of a correction exercise, it is still important that the prime recipient and sub-recipient establish a policy to clearly identify which user is authorized to make correction per award identification number.

2.10 What are the ramifications of non-compliance with the recipient reporting requirements?

Federal awards, like most legal contracts, are made with stipulations outlined in the award's term and conditions. Non-compliance with the reporting requirement as established under section 1512 of the Recovery Act is considered a violation of the award agreement because awards made with Recovery funds have a specific term requiring such compliance. The award term language is found in the Code of Federal Regulations (CFR) in 2 CFR Part 176.50. The Awarding Agency may use any customary remedial actions necessary to ensure compliance, including withholding funds, termination, or suspension and debarment, as appropriate.

2.11 How will these reports be made available to the public?

All reports submitted pursuant to Section 1512 of the Recovery Act will be made available on www.Recovery.gov and on individual Federal agency recovery websites. Federal agencies are encouraged to provide a link to www.Recovery.gov to satisfy the requirement of Federal agencies to post recipient information quarterly.

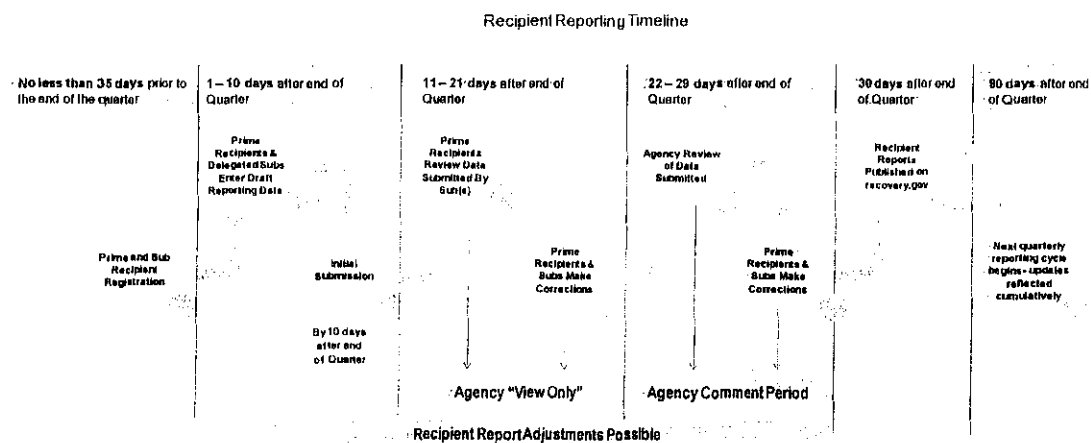
Section 3 – Recipient Reporting Process

3.1 What are the basic roles and responsibilities in the recipient reporting process?

The recipient reporting process is centralized by enabling all recipients (both prime- and those sub-recipients who have been delegated reporting responsibility) to use www.FederalReporting.gov to submit their quarterly reports. Agencies will review the submissions using the same website and underlying central data repository. This centralized approach will simplify filing requirements and will facilitate data review, analysis and transparency across the broad spectrum of Recovery Act programs and projects. The reported information will be made available to the public on www.Recovery.gov.

3.2 What are the key activities and timeframes required for quarterly reporting?

As previously mentioned in Section 2.5 of this Guidance, Section 1512 of the Recovery Act requires that prime recipients and delegated sub-recipients submit quarterly reports on their use of the funds not later than the 10th day following the end of each quarter beginning on October 10, 2009, and will be cumulative since enactment, or February 17, 2009. The statute further requires that reported information will be made available to the public not later than the 30th day after the end of each quarter. Summary statistics for reported data will appear on www.Recovery.gov prior to the end of the 30-day period, but they will be appropriately marked to indicate their review status. The timeframe of key reporting activities and their sequence and is shown below and described in the paragraphs that follow.



Registration. Reporting recipients and reviewing Federal agencies must be registered as authorized parties prior to submitting or reviewing recipient reports on www.FederalReporting.gov. The registration function will be available at www.FederalReporting.gov no later than August 26, 2009. Thereafter, prime recipients, delegated sub-recipients and Federal agencies can register on the website.

Prompt registration is encouraged. Since registration requires that prime recipients must be registered in the Central Contractor Registration (CCR) database and that all reporting entities have a D-U-N-S number (see Section 3.5 for more information on the CCR and D-U-N-S numbers), reporting recipients whom do not already meet these requirements should take immediate steps to prepare for registration. See Section 3.4 of this Guidance for further information detailing the registration process. Federal agencies will also need to register to perform their key activities within the system. Registration occurs only once, prior to the first reporting cycle. Prime recipients choosing to delegate reporting responsibilities should notify the affected sub-recipients early to allow them time to register.

During days 1-10 following the end of the quarter, recipients and delegated sub-recipients prepare and enter their reporting information. See Section 3.6 for a description of reporting methods. During this period, the data are considered to be in pre-submission status until explicitly submitted. Recipients using the Web-based form method will be allowed to store draft versions of their reports. Draft versions will only be available to the individual creating the report. Recipients using the spreadsheet or system extracted XML options may store draft versions outside the system on recipient-owned computers or workstations. The data will assume the status of “submitted” and conform with the Section 1512 reporting requirements only when the reporting entity explicitly submits it using the web site functions. Submitted reports will be viewable by the appropriate prime recipient and by the Awarding Agency¹⁰. Prime recipients and delegated sub-recipients that have not submitted their data reports by the end of the 10th day will be considered non-compliant with the recipient reporting requirements.

During days 11-21 following the end of the quarter, prime recipients ensure that complete and accurate reporting information is provided prior to the Federal agency comment period beginning on the 22nd day. Prime recipients will perform a data quality review as described in Section 4 of this Guidance. Prime recipients are responsible for verifying submitted information for all Recovery funds for which they are responsible, for notifying sub-recipients of reporting errors or omissions, and for ensuring any data corrections are completed in a timely manner. Prime recipients will be responsible for coordinating with sub-recipients on any identified data corrections. To facilitate corrections, the www.FederalReporting.gov solution will provide contact information for the individual who submitted the report including email contact information. After potential pilot testing of the solution, as mentioned in Section 2.6, it may be determined that the recipient reporting solution may not automatically generate email notifications for prime recipient to sub-recipient communications due to the potential volume resulting from computer-generated notifications.

¹⁰ Note that “Awarding Agency” is the data field consistent with the data dictionary within the supplemental materials to this Guidance.

Agencies may perform an initial review of the information in a “view-only” mode during this time period, but they will not be allowed to provide official feedback to prime recipients. During this period summary statistics for the initial data submissions will appear on www.Recovery.gov.

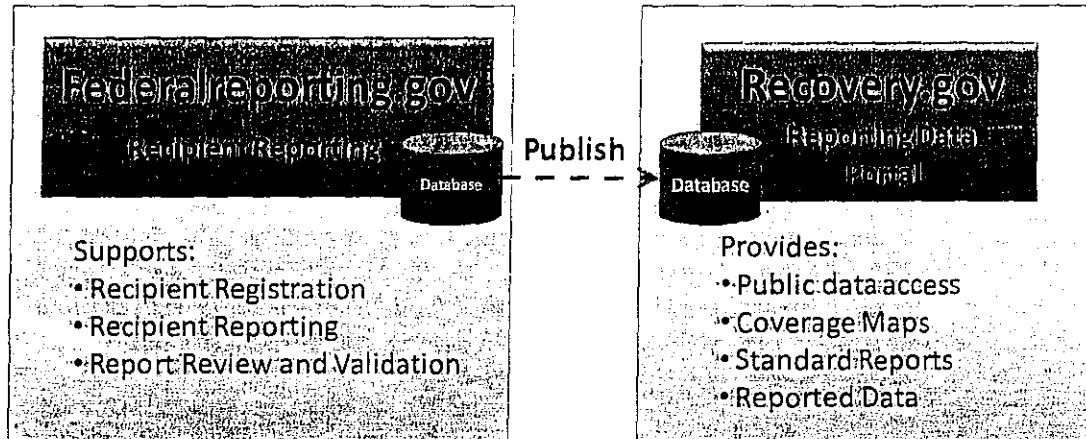
During days 22-29 following the end of the quarter, Federal agencies review and, if determined, comment on the submitted reporting information. Submitted reports will not be editable by prime recipients or delegated sub-recipients during this time period unless notified by the Federal agencies. The Federal agencies will perform a data quality review as described in Section 4 of this Guidance. The Federal agencies will notify the recipients and delegated sub-recipients of any data anomalies or questions through the www.FederalReporting.gov solution. This notification will unlock the notated report. Capability for Federal agency notation will be included as well. The original submitter must complete data corrections no later than the 29th day following the end of the quarter. Federal agency review will be indicated by the status indicators identified in Section 4.8 of this Guidance.

No later than 30 days following the end of the quarter, detailed recipient reports are made available to the public on the www.Recovery.gov website. Federal agencies are encouraged to link to www.Recovery.gov on their respective websites to fulfill their Section 1512 reporting requirements of facilitating the dissemination on recipient reports to the public. Federal agencies may also post recipient information on their respective websites after the data has been posted on the www.Recovery.gov website. Any data issues identified beyond the date of publication will be corrected or addressed in the next quarterly report.

3.3 What is www.FederalReporting.gov and what is its relationship to www.Recovery.gov?

The solution www.FederalReporting.gov is the web site that recipients will access in order to fulfill their reporting obligations as defined by Section 1512 of the Recovery Act and by this Guidance. The www.FederalReporting.gov solution will provide recipients and federal agencies with the ability to:

- Register for the site and manage their account(s)
- Submit reports
- View and comment on reports if the user represents a Federal agency or prime recipient
- Update or correct reports when appropriate



The www.FederalReporting.gov website works in conjunction with the www.Recovery.gov website to provide a comprehensive solution for recipient reporting and Recovery data transparency. Recipient reports are submitted to www.FederalReporting.gov and are ultimately published on www.Recovery.gov in accordance with the recurring quarterly timeframe described above in Section 3.2.

3.4 How does a recipient register for the www.FederalReporting.gov solution?

As previously mentioned in Section 3.2, prime recipients and delegated sub-recipients will need to be registered as authorized users of the www.FederalReporting.gov solution prior to submitting recipient reports into the website, and the registration function will be available on www.FederalReporting.gov no later than August 26, 2009. **Prompt registration is encouraged.** Award recipients should register within 10 business days of receiving an award once the registration function is available. The process for registering with www.FederalReporting.gov will be as follows:

- **Go to the website:** The user will launch their commercial Web browser software application (e.g., Internet Explorer, or Firefox) and will navigate to the website www.FederalReporting.gov.
- **Provide registration information:** The user will select the Registration link on the main page and fill-in the required registration information. All users will be asked for a preferred User Identifier (User ID), a password, an email address, and a primary phone number. Depending on the user's role in the system, some additional information may also be required.
 - Users that are representatives of State agencies will provide the Dun and Bradstreet (D&B) D-U-N-S number for their State agency. If the State agency uses more than one D-U-N-S number, the number of the State agency organization that is administering the award should be used.
 - Department of Defense (DoD) users will enter their organization's Department of Defense Activity Address Code (DODAAC).
 - Users that are representatives of prime recipients or sub-recipients will provide their organization's D-U-N-S number. These numbers will be used to lookup the user's organization in the CCR or D&B databases to populate additional information into the reporting submission.

- Prime and sub-recipients will need to register. If the Prime uses more than one D-U-N-S number, the number of the organization that received the award should be used.
 - Please note that registering with CCR and/or D&B requires additional processing time for the two organizations to validate user organization registration information. Combined CCR and D&B registration time can range from a single to several days depending on the particular organization and type of registration(s). If recipients need to register with CCR and/or D&B prior to using the www.FederalReporting.gov solution, **the recipients should allow sufficient time to complete the registrations in order to still meet Recovery Act reporting deadlines. Advance registration is strongly recommended.**
- **Receive confirmation:** When the website registration has been successfully concluded, the www.FederalReporting.gov solution will send a confirmation of registration to the user by email.

Account Maintenance: The www.FederalReporting.gov website will also support management of a user's account and user data such as contact information. For example, the user can update an email address or the user account can be disabled. Help desk support will be available for website functions as described in Section 3.10.

3.5 What are CCR and Dun and Bradstreet, and how does a recipient register with them?

What is CCR? The Central Contractor Registration (CCR) is the primary contractor database for the US Federal Government. CCR collects, validates, stores and disseminates data in support of agency acquisition missions. (Since October 1, 2003, it is Federally mandated that any organization wishing to do business with the Federal government under a Federal Acquisition Regulation (FAR)-based contract must be registered in CCR before being awarded a contract.) Because CCR is a Federally mandated and funded program, there is no cost to registrants for registering in CCR. Further detailed information on CCR is available at this URL: <http://www.ccr.gov/FAQ.aspx>.

What is a CCR MPIN? A Marketing Partner Identification Number (MPIN) is a password created by a user in CCR that allows the user to access other government systems such as PPIRS (Past Performance Information Retrieval System). The MPIN is a nine-character alphanumeric code; and must include at least one alpha and one numeric character, with no spaces. The MPIN is required in recipient reporting but not as part of the registration process.

What is a D-U-N-S number and who provides it? Dun & Bradstreet (D&B) maintains a business database containing information on more than 100 million businesses worldwide. D&B provides a D-U-N-S number, a unique 9-digit identification number, for each physical location of a business organization. D-U-N-S Number assignment is free for all businesses required to register with the U.S. Federal government for contracts or grants. The D-U-N-S number is used by the www.FederalReporting.gov solution to

identify business organizations. Further detailed information on D&B is available at this URL: <http://fedgov.dnb.com/webform>.

3.6 How does a recipient submit reports into www.FederalReporting.gov?

There are three basic methods to submit reports into the www.FederalReporting.gov solution. The reporting organization can choose the most convenient method for reporting among the following:

1) **Online data entry in a Web browser:** The website provides a straightforward data entry form, available via the user's Web browser, for report data entry.

Technical requirements: A commercial Web browser such as Microsoft's Internet Explorer, or Firefox is required for this option.

2) **Excel spreadsheet:** The website will make a Microsoft Excel spreadsheet available for report submission. The user can download this spreadsheet, open the spreadsheet in Microsoft's Excel spreadsheet program and fill it in. The spreadsheet can then be uploaded to the website with the user's browser at www.FederalReporting.gov. The spreadsheet is "locked" to restrict modification of the spreadsheet and allow data entry only in the required fields. **Note: Recipients must not modify the structure of the spreadsheet or risk non-compliance due to an invalid submission.**

Technical requirements: Microsoft Office's Excel (Version 2003 or newer) is required to open and edit the spreadsheet file. A Web browser such as Microsoft's Internet Explorer, or Firefox is required to access the website.

3) **Custom software system extract in XML:** Organizations with sufficient technical experience may choose to submit a properly formatted Extensible Markup Language (XML) file for their report submission. The supplemental materials to this Guidance contain the data dictionary and XML schema needed for formatting and structuring the XML system extracts. Additional detail about field constraints (such as the elements used in drop down menus on the Web form) will be added to those materials and posted to www.FederalReporting.gov. A service for validating the structure of XML extracts will be available on www.FederalReporting.gov prior to the submission period to ensure extracts are properly formatted. Recipients are strongly encouraged to test their report structures prior to the reporting period.

Technical requirements: A Web browser such as Microsoft's Internet Explorer, or Firefox is required to access the website. Organizations must match a specific XML schema format. The schema for the data submission will be provided on the www.FederalReporting.gov website.

Regardless of the approach taken, there is a common underlying data dictionary between all three approaches which will support common unified publishing to www.Recovery.gov in accordance with the quarterly timeline discussed in Section 3.2. See document entitled, *Recipient Reporting Data Model*. This document will be published on OMB's website and www.Recovery.gov as supplemental materials to this Guidance.

The process for filling in the reporting information **online (method 1)** is as follows:

- **Go to the website:** The user will launch their commercial Web browser software application (e.g., Internet Explorer or Firefox) and will navigate to the site www.FederalReporting.gov.
- **Login:** The system will prompt the user for a valid userid and password combination to log-in.
- **Select Recipient Type:** The user will select the appropriate recipient type (e.g., Prime Recipient or Sub-Recipient).
- **Select Reporting Type:** The user will select the appropriate reporting submission (e.g., grant, loan or other form of assistance).
- **Fill in the Online Form:** The user will fill in the online form according to the screen instructions. Some basic information is mandatory such as D-U-N-S Number, Grant or Loan number. This data should be gathered in advance of using the online system
- **Confirmation:** Once the user transmits data, the reporting solution will acknowledge receipt and will check for validity of all information. Due to the anticipated volume of reports, the validation may be delayed up to 24 hours. The validation will ensure that the system can accept the report.
- **Submission:** The Web form will require that the user explicitly “submit” the entered information when completed. Recipients who have not completed the submission step by the end of the 10th day after the end of the reporting quarter will be considered non-compliant with reporting requirements. The system will acknowledge the completion of the submission step if it is successful.

The process for *downloading the spreadsheet (method 2)* is as follows:

- **Go to the website:** The user will launch their commercial Web browser software application (e.g., Internet Explorer or Firefox) and will navigate to the site www.FederalReporting.gov.
- **Login:** The system will prompt the user for a valid userid and password combination to log in.
- **Select Recipient Type:** The user will select the appropriate recipient type (i.e., Prime Recipient or Sub-Recipient).
- **Select Reporting Type:** The user will select the appropriate type of reporting submission (e.g., grant, loan or other form of assistance).
- **Select the File:** The user will select the spreadsheet and download the template.

Once the spreadsheet has been updated, the process for *uploading the spreadsheet* is as follows

- **Go to the website:** The user will launch their commercial Web browser software application (e.g., Internet Explorer or Firefox) and will navigate to the site www.FederalReporting.gov.
- **Login:** The system will prompt the user for a valid userid and password combination to log in.

3.8 How does a Federal agency or recipient review reporting submissions?

The www.FederalReporting.gov solution supports the review of recipient submissions by Federal agencies and prime recipients. The solution will enable multiple reviewers for each agency or prime recipient, although there will be only a single reviewer allowed for each individual report. The process for reviewing reporting submissions is as follows:

- **Go to the website:** The user will launch their commercial Web browser software application (e.g., Internet Explorer or Firefox) and will navigate go to the site www.FederalReporting.gov.
- **Login:** The system will prompt for a password and the user will login.
- **Select Report:** The user will select a report to review if action is required by the report submitter, and the reviewer is allowed to make comments in accordance with the quarterly timeline in Section 3.2. There will be a mechanism for extracting recipient reports for Federal agency review and a capability within the system to notate reports.

3.9 How does a recipient make a report correction to a submission?

A recipient may decide, or may be asked by a subsequent reviewer, to make a correction to a submission. The entity submitting the report is the data owner of the submission and is therefore responsible for applying any corrections. The recipient can update the submission with the following process:

- **Go to the website:** The user will launch their commercial Web browser software application (e.g., Internet Explorer or Firefox) and will navigate go to the site www.FederalReporting.gov.
- **Login:** The system will prompt for a password and the user will login.
- **Select an Existing Report:** The user will select a report to be re-submitted.
- **Data Entry:** If the report was submitted in an online form (method 1), the user can then edit the fields in the online form and save them again.
- **Select the Replacement File:** If the report submission is file-based (methods 2 or 3), the user will select the updated XML file or spreadsheet file to be uploaded and will submit the file according to screen instructions.
- **Confirmation:** The system will display a confirmation of report acceptance. The system will validate the structure of the data for conformance to the data standards. This process may take as long as 24 hours to process based on system load.

3.10 How does a recipient access the *www.FederalReporting.gov* solution helpdesk?

The registration and reporting processes will be supported by a helpdesk. The helpdesk contact information will be available on the www.FederalReporting.gov website at the start of registration and will provide help with user functions related to the registration

and reporting processes. Questions regarding specific Recovery awards or programs should be referred to the Federal Awarding Agency.

Federal Agency Review Process

3.11 How will agencies obtain recipient data elements?

Recovery recipient reporting data will be provided for download by Federal agency and program officials from a central data repository. These files may be used to automate data quality reviews or create agency/program specific reports. Details regarding format and download options are being developed.

3.12 What data elements will Federal agencies use to review recipient reports?

Federal agencies should develop internal policies and procedures for reviewing reported data. Federal agencies may extract the data elements below to validate recipient reports for compliance, accuracy, and consistency with Federal award data. Automated checks for accuracy may be conducted by comparing recipient data to the award data stored in agency financial systems of record. For example, recipient data may be used to ensure that all Federal agency recipients have submitted reports and to verify that all prime-recipient D-U-N-S reported have actually received Recovery funding. Also, amounts may be validated for consistency to ensure the individual or aggregated values do not exceed the agency amounts awarded or disbursed. Items the Federal agency might consider:

- Award Number
- Funding Agency Name
- D-U-N-S Number
- EIN
- CFDA
- Recipient Organization
- Project/Grant Period
- Total Cost of Infrastructure Investments
- Amount of award Current Value
- Amount of Award or Sub Award Ultimate Value (anticipated total amount of cash)
- Total amount of Sub awards less than \$25,000
- Total Jobs Created/Retained

3.13 How will the other data elements be used by Federal agencies?

Federal agencies may review additional data elements highlighted below to determine if a prime recipient's report is realistic or will produce expected results. This type of review is more subjective and may need to be conducted manually. For example, the Federal agency may elect to compare data elements for consistency in reporting by comparing the

percent of money disbursed with the percent complete or comparing the project/activity code with the project's narrative description. The agency may choose to review fields for reasonableness, such as the estimated number of jobs created/retained; or choose to measure the value of infrastructure costs with the rationale for the infrastructure investment.

- Completion Status
- Estimate of number of jobs created
- Estimate of number of jobs retained
- Purpose of infrastructure investment
- Rationale for funding the infrastructure investment with ARRA funds
- NEPA Compliance Status
- NEPA Supporting Information

3.14 Can agencies use recipient reporting to make decisions impacting the recipient's awards?

Although the intent of the recipient reporting solution is primarily reporting as opposed to management, Federal agencies may use recipient reports to help assess compliance with the terms and conditions of the individual award agreements, further assess risks and to determine when to release the remaining funds. For example, for certain grant programs a Federal agency may have partially awarded each State's allocation with the intent to award the remaining available Recovery funds after each State addresses how they will meet the reporting requirements in the Recovery Act, including the recipient reports required by Section 1512(c). In this case, the agency may publish specific guidance that only affects its grants, in accordance with these reporting requirements, to specify what information recipients must provide before receiving the balance of its Recovery grants.

Section 4 – Data Quality Requirements

4.1 What is the scope of required data quality reviews?

Data quality (i.e., accuracy, completeness and timely reporting of information) reviews required by this Guidance are intended to emphasize the avoidance of two key data problems -- material omissions and significant reporting errors. Material omissions are defined as instances where required data is not reported or reported information is not otherwise responsive to the data requests resulting in significant risk that the public is not fully informed as to the status of a Recovery Act project or activity. An example of a material omission would be a recipient, or delegated sub-recipient, who fails to report the current percentage of completion for a project and/or an activity that has been funded by the Recovery Act. Instances in which a prime recipient or sub-recipient fails to report entirely would be considered a material omission for the purposes of this Guidance.

In general, material omissions should be minimized by the www.FederalReporting.gov solution, which will require fields to be completed for successful transmission. However, a material omission may still occur to the extent submitted data is not responsive to a specific data request. For example, a recipient required to report a description of a purchase made from a vendor may not provide sufficient detail in the description for the reader to derive the nature of the purchase.

Significant reporting errors are defined as those instances where required data is not reported accurately and such erroneous reporting results in significant risk that the public will be misled or confused by the recipient report in question. An example of this would be a recipient, or sub-recipient, who reports expenditures in excess of the amount awarded by the Federal funding agency, excluding funding resulting from match requirements. Significant reporting errors may be intentional or accidental. Actions should be taken to reduce either cause.

Federal agencies should coordinate how to apply the definitions of material omission and significant reporting error in given program areas or across programs in a given agency. This will ensure consistency in the manner in which data quality reviews are carried out.

4.2 Who is responsible for the quality of data submitted under Section 1512 of the Recovery Act?

Data quality is an important responsibility of key stakeholders identified in the Recovery Act. Prime recipients, as owners of the data submitted, have the principal responsibility for the quality of the information submitted. Sub-recipients delegated to report on behalf of prime recipients share in this responsibility. Agencies funding Recovery Act projects and activities provide a layer of oversight that augments recipient data quality. Oversight authorities including the OMB, the Recovery Board, and Federal agency Inspectors General also have roles to play in data quality. The general public and non-governmental

entities interested in “good government” can help with data quality, as well, by highlighting problems for correction.¹¹

- Prime Recipient
 - Owns recipient data and sub-recipient data
 - Initiates appropriate data collection and reporting procedures to ensure that Section 1512 reporting requirements are met in a timely and effective manner
 - Implements internal control measures as appropriate to ensure accurate and complete information
 - Performs data quality reviews for material omissions and/or significant reporting errors, making appropriate and timely corrections to prime recipient data and working with the designated sub-recipient to address any data quality issues
- Sub-recipient
 - Owns sub-recipient data
 - Initiates appropriate data collection and reporting procedures to ensure that Section 1512 reporting requirements are met in a timely and effective manner
 - Implements internal control measures as appropriate to ensure accurate and complete information
 - Reviews sub-recipient information for material omissions and/or significant reporting errors, and makes appropriate and timely corrections
- Federal Agency
 - Provides advice/programmatic assistance
 - Performs limited data quality reviews intended to identify material omissions and/or significant reporting errors, and notifies the recipients of the need to make appropriate and time changes
- Oversight Authorities (such as OMB, Recovery Board, and agency Inspectors General)
 - Establish data quality expectations
 - Establish data and technical standards to promote consistency
 - Coordinate any centralized reviews of data quality

4.3 Does this Guidance mandate a specific methodology for conducting data quality reviews?

No. However, the relevant party conducting a data quality review required by this Guidance (i.e., recipients, sub-recipients, Federal agencies) must use its discretion in determining the optimal method for detecting and correcting material omissions or

¹¹ Mechanisms for the public to provide feedback on the data will be available on Recovery.gov as well as individual agency Recovery websites.

significant reporting errors. At a minimum, Federal agency, recipients, and sub-recipients should establish internal controls to ensure data quality, completeness, accuracy and timely reporting of all amounts funded by the Recovery Act. Possible approaches to this include;

- Establishing control totals (e.g., total number of projects subject to reporting, total dollars allocated to projects) and verify that reported information matches the established control totals;
- Creating an estimated distribution of expected data along a “normal” distribution curve and identify outliers;
- Establishing a data review protocol or automated process that identifies incongruous results (e.g., total amount spent on a project or activity is equal to or greater than the previous reporting); and
- Establishing procedures and/cross-validation of data to identify and/or eliminate potential “double counting” due to delegation of reporting responsibility to sub-recipient (see Section 2.9).

4.4 What is the process and timing of data quality review efforts?

- Recipients and sub-recipients reporting Section 1512 data into the www.FederalReporting.gov solution must initiate a review of the data both prior to, and following, the formal submission of data. The post-submission review period runs from the 11th day of the reporting month to the 21st day of the reporting month for prime recipients. During this post-submission review period, significant reporting errors or material omissions that are discovered can be corrected using the www.FederalReporting.gov solution. Specific instructions for submitting new or corrected data will be provided on the www.FederalReporting.gov website. The prime recipients are responsible for reviewing data submitted by sub-recipients. Where a recipient identifies a data quality issue with respect to information submitted by the sub-recipient, the recipient is required to alert the relevant sub-recipient of the nature of the problem identified by the recipient. All corrections by recipients and sub-recipients during this phase of the review must be transmitted by the 21st day of the reporting month.
- Federal agencies will initiate a review of the data after formal submission by the recipients and sub-recipients. During the recipient and sub-recipient review period (i.e., day 11 to day 21 of the reporting month), Federal agencies will have access to review the data and should begin initial reviews at this time. However, the official agency review process begins on the 22nd day of the reporting month and runs until the 29th day of the reporting month. During this period, the Federal agency will be responsible for reviewing data submitted by recipients and sub-recipients. Where an agency identifies a data quality issue with respect to information submitted by the recipient or sub-recipient, the Federal agency is required to alert the relevant recipient of the nature of the problem identified by

the Federal agency. All corrections by recipients and sub-recipients during this phase of the review must be transmitted by the 29th day of the reporting month.

- After the 29th day, no further corrections can be made. Corrections identified that for whatever reason cannot be made by the 29th of the month will be incorporated into the following quarter's data report of the recipient or delegated sub-recipient.

Additional information on the timing of data quality reviews can be found in Section 3.2 of this Guidance.

4.5 Are recipients required to certify or approve sub-recipient data into the *www.FederalReporting.gov* solution prior to the end of the recipient post-submission review period (i.e., day 11 to day 21 of the reporting month)?

No. The recipient is required to run a data quality review process consistent with Section 3 and Section 4 of this Guidance. The recipient is further required to make necessary corrections to recipient data and to further alert sub-recipients of identified significant reporting errors or material omissions. These actions are expected to occur prior to the 22nd day of the reporting month. The agency review process will begin on the 22nd day of the reporting month regardless of the actions of the recipient and sub-recipient. Please see Section 3.2 for further guidance.

No separate statement of assurance or certification will be required of prime recipients with respect to the quality of sub-recipient data.

4.6 What are the implications or consequences of uncorrected data quality problems by recipients and sub-recipients?

As referenced throughout this Guidance, recipients and delegated sub-recipients are the owners of the data submitted. As further promulgated in OMB M-09-15, timely, complete, and effective reporting under Section 1512 of the Recovery is a term and condition of receiving Recovery Act funding.

As a result, Federal agencies will be required to continuously evaluate recipient and sub-recipient efforts to meet Section 1512 requirements as well as the requirements of OMB implementing guidance and any relevant Federal program regulations. In particular, Federal agencies will work to identify and remediate instances in which:

- Recipients that demonstrate systemic or chronic reporting problems and/or otherwise fail to correct such problems as identified by the Federal agency;
- Sub-recipients that demonstrate systemic or chronic reporting problems and/or otherwise fail to correct such problems as identified by the recipient or Federal agency; and
- Recipients that demonstrate systemic or chronic deficiencies in meeting its responsibilities to review and identify data quality problems of sub-recipients consistent with the requirements of this Guidance.

On a case-by-case basis, such findings of a Federal agency can result in termination of Federal funding and/or initiation of suspension and debarment proceedings of either the recipient or sub-recipient, or both. Further, in some cases, intentional reporting of false information can result in civil and/or criminal penalties.

See also Section 2.10 of this Guidance.

4.7 Are Federal agencies required to certify or approve data for publication on www.Recovery.gov or agency websites?

No. The Federal agency is required to run a data quality review process consistent with Sections 3 and 4 of this Guidance. These actions are expected to occur prior to the 30th day of the reporting month. The information will be posted according to the Recovery Act and this Guidance no later than the 30th day after the end of the quarter regardless of the outcome of Federal agency data quality review efforts.

4.8 How will issues identified under the data quality reviews conducted pursuant to this Guidance be communicated to the public?

This Guidance seeks to strike an appropriate balance between providing the public with transparency into the information as reported by prime recipients and sub-recipients and the longstanding requirements of the Government to ensure the quality of data disseminated to the public. Federal agencies will be required to perform data quality checks similar to those described in Section 4.3.¹² In addition, Federal agencies will be required to classify submitted data (which may be organized by award or program), using the following three categories:

- Not Reviewed by agency;
- Reviewed by agency, no material omissions or significant reporting errors identified; and
- Reviewed by agency, material omissions or significant reporting errors identified.

Within the third category, to the extent the agency identifies any data that it has reason to believe is false or misleading that has not been corrected by the recipient or sub-recipient, the Federal agency must provide such findings to recoveryupdates@gsa.gov so that the Recovery Board can make such instances public on the website www.Recovery.gov.

The system will automatically default to the first category of “Not reviewed by agency” if an agency has not chosen one of the above three categories before the 29th day of the process.

¹² Consistent with Section 3.3, it may not be necessary for a Federal agency to separately review each submitted data record by a prime or sub-recipients. At the discretion of the Federal agency, the review may encompass only aggregate information in an effort to identify outliers within a unique record. As a result, a Federal agency may, depending on the review approach or methodology, classify data as being “reviewed by agency” even if a separate and unique review of each submitted record has not occurred.

4.9 Are Federal agencies required to review prime recipient processes and procedures for collecting, reviewing, and reporting Section 1512 information?

Yes. Consistent with Federal agency standard oversight responsibilities for financial assistance programs, Federal agencies will need to review the processes and procedures of prime recipients.

Section 5 – Reporting on Jobs Creation Estimates by Recipients

5.1 What reporting is required by the Recovery Act for estimates of jobs created or retained?

There are two distinct types of jobs reports that the Recovery Act requires.

First, the Council of Economic Advisers, in consultation with OMB and Treasury, are required by the Recovery Act to submit quarterly reports to Congress that detail the impact of programs funded through Recovery funds on employment, economic growth, and other key economic indicators. OMB and agencies will continue to partner with CEA on these quarterly reports and other questions regarding macro-level jobs estimates. Agencies with questions about reporting macro-level or indirect jobs estimates should refer to CEA's guidance on reporting jobs: <http://www.whitehouse.gov/administration/eop/cea/Estimate-of-Job-Creation/>

The second type of job estimates should be submitted by recipients of Recovery funds for each project or activity, as required by Section 1512(c)(3)(D) of the Recovery Act. This section addresses the jobs estimates required to be submitted by recipients.

5.2 What information are recipients covered by Section 1512 required to report?

Recipient reporting requirements for grants, cooperative agreements, and loans were published in two separate Federal Register notices. The first notice contained proposed data elements and instructions on reporting jobs created and retained under grants, cooperative agreements, and loans (74 FR 14824). The comments on this first notice were reviewed, though an alternate data set had to be cleared on an emergency basis to accommodate the more immediate need for reporting requirements at the recipient and federal levels. The second notice contained interim final guidance and a standard award term (2 CFR 176.50) with a request for public comment. The comment period for the second notice ends on June 22, 2009 (74 FR 18449).

While this guidance does not apply to contracts, recipient reporting requirements and a standard award clause for federally awarded contracts were published in an interim final rule with request for public comment (FAR 52.204-11). The public comment period on the contract rule has now closed, and the final rule will be published in the near future.

The final detailed reporting requirements for recipients of grants, cooperative agreements, loans and contracts along with data entry instructions will be posted on www.FederalReporting.gov as explained in federal agency award terms/clauses.

The points below provide an overview of the key requirements and supplemental guidance on reporting the employment impact of the Recovery Act funded work.

- Prime recipients are required to report an estimate of jobs directly created or retained by project and activity or contract. Recipients will be required to report an aggregate number for the cumulative jobs created or retained for the quarter in a separate numeric field. Recipients will also be asked to provide a narrative description of the employment

impact. While no change is being made to the actual information required to be reported, the clarification that this information will be collected in two separate fields – one numeric and a text field for the narrative – is an update from previous Recovery Act guidance.

- A job created is a new position created and filled or an existing unfilled position that is filled as a result of the Recovery Act; a job retained is an existing position that would not have been continued to be filled were it not for Recovery Act funding. A job cannot be counted as both created and retained. Also, only compensated employment in the United States or outlying areas should be counted. See 74 FR 14824 for definitions.
- The estimate of the number of jobs required by the Recovery Act should be expressed as “full-time equivalents” (FTE), which is calculated as total hours worked in jobs created or retained divided by the number of hours in a full-time schedule, as defined by the recipient (see Section 5.3 for more information). The FTE estimates must be reported cumulatively each calendar quarter.
- Recipients of grants, cooperative agreements, and loans must include in the aggregate number and their narrative description an estimate of jobs created and retained on projects and activities managed by their funding recipients. This clarification is a change from previous guidance, based on comments received on the Federal Register notice and stakeholder input. For additional guidance on providing these estimates see Section 5.4.
- Recipients should not attempt to report on the employment impact on materials suppliers and central service providers (so-called “indirect” jobs) or on the local community (“induced” jobs). Employees who are not directly charged to Recovery Act supported projects/activities, who, nonetheless, provide critical indirect support, e.g., clerical/administrative staff preparing reports, institutional review board staff members, departmental administrators, are NOT counted as jobs created/retained. Recipients report only direct jobs because they may not have sufficient insight or consistent methodologies for reporting indirect or induced jobs. The Council of Economic Advisers is developing a macro-economic methodology to account for the overall employment impact of the Recovery Act.
- The narrative should include a brief description of the types of jobs created or retained. This description may rely on job titles, broader labor categories, or the recipient’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.
- Recipients will report for all projects and activities or federally awarded contracts regardless of whether they are funded in whole or in part by the Recovery Act, but should report only on the jobs and funding attributable to an award under the Recovery Act.

Please note that certain recipients, such as those funded by Department of Transportation, have job reporting requirements in the Act that go beyond Section 1512. Recipients must follow this

guidance with respect to the reporting requirements under Section 1512, and must also comply with program and agency-specific requirements.

5.3 What methodology should recipients use when calculating the number of jobs created or retained?

The requirement for reporting jobs is based on a simple calculation used to avoid overstating the number of other than full-time, permanent jobs. This calculation converts part-time or temporary jobs into “full-time equivalent” (FTE) jobs. In order to perform the calculation, a recipient will need the total number of hours worked that are funded by the Recovery Act. The recipient will also need the number of hours in a full-time schedule for a quarter. The formula for reporting can be represented as:

$$\frac{\text{Cumulative Recovery Act Funded Hours Worked (Qtr 1...n)}}{\text{Cumulative Hours in a Full-time Schedule (Qtr 1...n)}} = \text{FTE}$$

Example:

Assume that a recipient is preparing its first quarterly report and that the recipient’s Recovery Act funded work required two full-time employees and one part-time employee working half days for the quarter. Also assume that the recipient’s full-time schedule for the quarter is 520 hours (2080 hours in a work-year divided by 4). To convert hours worked to number of FTE for the first quarterly report, aggregate all hours worked and divide by the number of hours in a full-time schedule for the quarter. In this example, full-time hours worked (520 hrs x 2 employees = 1040 hrs) + part-time hours worked (260 hrs) ÷ number of hours in a full-time schedule for the quarter (520 hrs) = 2.5 FTE reported in the first quarterly report. Because jobs are reported cumulatively each quarter, this same number of FTE would be reported for the second quarter if the same number of employees worked the same number of hours.

Reporting is cumulative across the project lifecycle, and will not reset at the beginning of each calendar or fiscal year. In the example above, the 2.5 FTE reported in the first quarterly report will stay the same through the project lifecycle, assuming the same number of employees work the same number of hours. The table below shows the FTE calculations through the lifecycle of an 18 month project that uses full-time, part-time, and temporary workers.

| Period | 3rd qtr | 4th qtr | 1st qtr | 2nd qtr | 3rd qtr | 4th qtr |
|--------------------------------|---------|---------|---------|---------|---------|---------|
| Full-Time Schedule | 520 | 1040 | 1560 | 2080 | 2600 | 3120 |
| Full Time Employee 1 | 520 | 1040 | 1560 | 2080 | 2600 | 3120 |
| Full Time Employee 2 | 520 | 1040 | 1560 | 2080 | 2600 | 3120 |
| Part Time Employee (half time) | 260 | 520 | 780 | 1040 | 1300 | 1560 |
| Temporary Employee (650 hrs.) | 0 | 0 | 130 | 390 | 650 | 650 |
| Total Hours Worked | 1300 | 2600 | 4030 | 5590 | 7150 | 8450 |
| Quarterly FTE | 2.50 | 2.50 | 2.58 | 2.69 | 2.75 | 2.71 |

An alternative calculation based on the allocable and allowable portion of activities expressed as a percentage of the total is acceptable for recipients of assistance agreements that must comply with OMB Circular A-21, Cost Principles for Educational Institutions. OMB Circular A-21 recognizes that practices vary among educational institutions as to the activity constituting a full workload. Compensation charged to sponsored projects must conform to the institution's established policies and reasonably reflect the activity for which the employee is compensated. Charges to sponsored projects may be expressed as a percentage of their total activities. Therefore, for purposes of ARRA reporting of jobs created or retained, colleges and university may count, proportionately, the percentage of effort directly charged to ARRA awards as an FTE equivalent.

For example - A faculty member charging 50% effort on an ARRA award will be counted as .5 FTE. Hourly and part time employees shall be calculated based on actual hours worked on the sponsored agreement and the institution's definition of a full workload for employment.

The total hours reported may include paid leave.

5.4 How should recipients estimate the job impact of funding provided to sub-recipients?

Recipients must include an estimate of jobs created and retained on projects and activities managed by their funding recipients in their aggregate number and their narrative description. This information will be provided for each project and activity funded by the Recovery Act. The clarification that recipients must report jobs estimates for all sub-awarded funds is an update from previous guidance.

For example, consider a prime recipient that receives a \$10 million grant from a Federal agency for a specific project or activity. Assume the prime recipient hires five FTE to administer the program at a total cost of \$1 million, and distributes nine \$1 million grants to sub-recipients. In this case, the prime recipient will report the direct job creation of 5 FTE, and would also provide an estimate of the total employment impact of the nine \$1 million grants (using the same FTE methodology discussed in 5.3).

Prime recipients are required to generate estimates of job impact by directly collecting specific data from sub-recipients and vendors¹³ on the total FTE resulting from a sub-award. To the maximum extent practicable, information should be collected from all sub-recipients and vendors in order to generate the most comprehensive and complete job impact numbers available. However, in limited circumstances, the prime recipient can employ an approved statistical methodology to generate estimates of job impact, thereby collecting data from a smaller subset of sub-recipients and vendors in order to extrapolate an estimate of job impacts to all applicable sub-recipients and vendors. A statistical methodology should only be employed in those cases

¹³ Job estimates regarding vendors of prime- or sub-recipients, should be limited to direct job impacts for the vendor and not include "indirect" or "induced" jobs (see Section 5.2), e.g., hiring/retaining employees for infrastructure projects.

where a comprehensive collection of jobs data from all sub-recipients and vendors is overly costly or burdensome and thus disrupts the prime recipients' ability to effectively implement the underlying mission of the program.

The appropriate Federal agency for a given program area will issue supplementary guidance providing an acceptable statistical methodology for this purpose, including required sampling parameters. Further, OMB will explore with the Board whether the current data collection technology, www.FederalReporting.gov, can be modified in the future to allow sub-recipients to report jobs data directly to prime recipients.

In the narrative description accompanying the estimate, where the prime recipient utilizes a statistical methodology as described above, the prime recipient should note what part of the estimate was generated with actual data received versus what part of the estimate was generated through extrapolation. In addition, the narrative should provide a description of the statistical methodology used.

In addition to providing this information by project and activity as required by the Recovery Act, as a best practice it is also recommended that State governments post the employment impact of all recovery funds prominently on the State recovery website.

Appendix – Reference Sheet of Frequently Used Guidance Terms

This appendix aims to serve as a reference sheet of terms used in this Guidance document. It does not intend to redefine terms used in existing OMB Circulars, and it is meant to interpret this guidance document only.

Data quality as used in this Guidance means steps considered to improved accuracy, completeness and timely reporting of information. The data quality reviews required by this Guidance are intended to emphasize the avoidance of two key data problems -- material omissions and significant reporting errors that are also defined in this appendix.

Data Elements are the specific pieces of information that will be collected for recipient reporting under the Recovery Act requirements. The data dictionary provided in the supplemental materials to this Guidance lists these elements in a technical nature, and are also highlighted in Section 2 of this Guidance.

Direct loan means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term also includes certain equivalent transactions that extend credit.

Expenditures – As defined in the data dictionary provided in the supplemental materials to this Guidance, the amount of Recovery funds received that were used to pay for projects or activities, including payments made to sub-recipients and vendors.

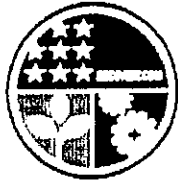
Material omissions are defined as those instances where required data is not reported or reported information is not otherwise responsive to the data request and such reporting gaps result in significant risk that the public will be misled or confused by the recipient report in question. In general, material omissions should be minimized by the www.FederalReporting.gov solution, which will require fields to be completed for successful transmission, as well as include edits and cross-edits to ensure data validity. However, a material omission may still occur to the extent submitted data is not responsive to a specific data request. For example, a recipient required to report a description of a purchase made from a vendor may not provide sufficient detail in the description for the reader to derive the nature of the purchase.

Recipients required to report to the Federal government are entities, other than individuals, that receive Recovery Act funding as Federal awards in the form of a grant, cooperative agreement, or loan directly from the Federal government. Recipients may be referred to as “prime recipients” in this document to help make the distinction between sub-recipients regarding the roles, responsibilities and reporting requirements.

Significant reporting errors are defined as those instances where required data is not reported accurately and such erroneous reporting results in significant risk that the public will be misled or confused by the recipient report in question. An example of this would be a recipient, or sub-recipient who reports expenditures in excess of the amount awarded by the Federal funding agency, excluding funding resulting from match requirements.

Sub-recipients that receive all or a portion of the Recovery funding may report to the Federal government based on guidance and direction from the prime recipient. Sub-recipients are non-Federal entities that are awarded Recovery funding through a legal instrument from the prime recipient to support the performance of any portion of the substantive project or program for which the prime recipient received the Recovery funding. The terms and conditions of the Federal award are carried forward to the sub-recipient. This sub-award could be in the form of a sub-grant or sub-contract, but it is not considered a “federal government contract,” as it is not awarded directly by a Federal agency. A sub-recipient may also be a prime recipient of other Federal awards directly from the Federal government.

Vendors, for the purposes of this guidance are entities or individuals from which the prime recipient or sub-recipient procures goods or services needed to carry out the project or program. Vendors are not awarded funds by the same means as sub-recipients and are not subject to the terms and conditions of the federal financial assistance award.



NHRECOVERY
putting new hampshire to work



March 24, 2010

Attachment III

Public Utilities Commission
Budget Detail

Subcontract Budget Detail
(required for any subcontract over 25% of the Total Administrative Costs or over \$100k)

| Subcontractor Name | Subcontract Value | Purpose of Subcontract |
|--------------------------|-------------------|--|
| NH Public Utilities Comm | \$500,000 | To create and support the Residential Central Pellet Heating System Rebate Program |

| Cost Category | Estimated Cost | Basis of Estimate (include labor rates, hours, purpose of travel, etc) |
|----------------------------|----------------|--|
| Direct Labor | | |
| Labor | \$27,613 | through May 2012 |
| Fringe Benefits | \$21,674 | through May 2012 |
| Labor Overhead | | |
| Direct Labor Total | \$49,287 | |
| Travel | | |
| Supplies/Materials | \$200 | General Office Supplies |
| Outreach/Marketing | | |
| Other Direct Costs | \$500 | Audit Set Aside |
| Indirect Costs | | |
| Total Administrative Costs | \$49,987 | |

| Program Deliverables | Estimated Cost | Detail |
|----------------------|----------------|---|
| Rebates to Residents | \$450,013 | 30% of system cost up to \$6,000 - through May 2012 |

| | |
|----------------------------|------------------|
| Total Costs | |
| Administration | \$49,987 |
| Rebates | 450,013 |
| Total Program Costs | \$500,000 |

progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (*write in the name of the government agency*) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference into this contract.


(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the federal Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001 and New Hampshire RSA Chapter 641.

Exhibit B
Initials 
Date 7/22/11
Page 17 of 18

(b) Contract Work Hours and Safety Standards Act. For any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

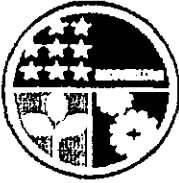
(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States and the State of New Hampshire, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The OEP shall upon its own action or upon written request of an authorized representative of the federal Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the State of New Hampshire and the federal Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

The Contractor/Grantee agrees to have an Occupational Safety and Health Administration (OSHA) 10-hour construction safety program for their on-site employees that complies with the requirements set forth in RSA 277:5-a.



NHRECOVERY
putting new hampshire to work



New Hampshire Office of Energy and Planning

STANDARD EXHIBIT C

The Contractor identified in Section 3 of the Memorandum of Agreement to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS
ALTERNATIVE I - FOR GRANTEEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS
US DEPARTMENT OF LABOR
US DEPARTMENT OF ENERGY**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Director, New Hampshire Office of Energy and Planning,
4 Chenell Drive, Concord, NH 03301

- (A) The grantee certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an ongoing drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

Exhibits C through H
Initials *[Signature]*
Date *[Signature]*
Page 1 of 8

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS
ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS, cont'd**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS
US DEPARTMENT OF LABOR
US DEPARTMENT OF ENERGY**

- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
- (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

- (B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, State, zip code) (list each location)

Check ☐ if there are workplaces on file that are not identified here.

New Public Utilities Commission

Contractor Name

Period Covered by this Certification

Thomas B. Getz, Chairman

Name and Title of Authorized Contractor Representative

Thomas B. Getz

Contractor Representative Signature

3-23-10

Date

New Hampshire Office of Energy and Planning

STANDARD EXHIBIT D

The Contractor identified in Section 3 of the Memorandum of Agreement agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

CERTIFICATION REGARDING LOBBYING

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS
US DEPARTMENT OF LABOR
US DEPARTMENT OF ENERGY

Programs (indicate applicable program covered):

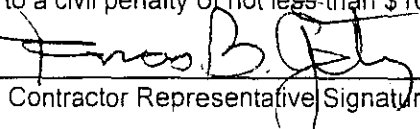
Community Services Block Grant
Low-Income Home Energy Assistance Program
Senior Community Services Employment Program
Weatherization Program

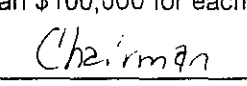
Contract Period: _____

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-1.
- (3) The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


Contractor Representative Signature


Contractor's Representative Title

New Hampshire Public Utilities Commission

Contractor Name


Date

New Hampshire Office of Energy and Planning

STANDARD EXHIBIT E

The Contractor identified in Section 3 of the Memorandum of Agreement agrees to comply with the provisions of Executive Office of the President, Executive Order 12529 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

Instructions for Certification

- (1) By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
- (2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with **NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION** determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- (3) The certification in this clause is a material representation of fact upon which reliance was placed when **NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION** determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, **NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION** may terminate this transaction for cause or default.
- (4) The prospective primary participant shall provide immediate written notice to the **NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION** agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
- (6) The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by **NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**.
- (7) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by **NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
- (9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, **NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION** may terminate this transaction for cause or default.

New Hampshire Office of Energy and Planning

STANDARD EXHIBIT F

CERTIFICATION REGARDING THE
AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor identified in Section 3 of the Memorandum of Agreement agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.


Contractor Representative Signature

Chairman
Contractor's Representative Title

New Hampshire Public Utilities Commission
Contractor Name

3-23-10
Date

New Hampshire Office of Energy and Planning

STANDARD EXHIBIT G

CERTIFICATION
Public Law 103-227, Part C
ENVIRONMENTAL TOBACCO SMOKE

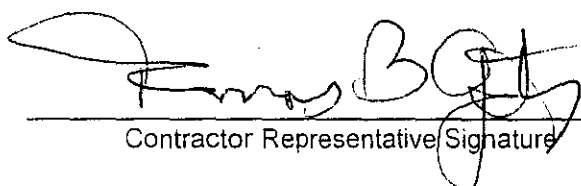
Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee.

The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.



Contractor Representative Signature

Chairman

Contractor's Representative Title

New Hampshire Public Utilities Commission

Contractor Name

3-22-00

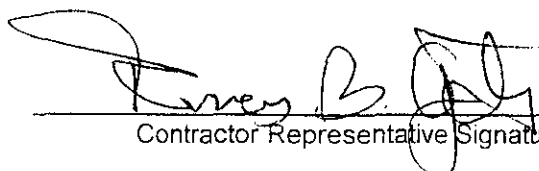
Date

EXHIBIT H

TITLE X
PUBLIC HEALTH
Chapter 147-A
Hazardous Waste Management

The Contractor identified in Section 3 of the Memorandum of Agreement agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

By signing and submitting this proposal (contract) the Contractor agrees to comply with all applicable provisions of Title X Public Health Chapter 147-A: Hazardous Waste Management.

| | |
|---|-----------------------------------|
|  | Chairman |
| Contractor Representative Signature | Contractor's Representative Title |
| New Hampshire Public Utilities Commission | 3-23-11 |
| Contractor Name | Date |



NHRECOVERY
putting new hampshire to work



March 24, 2010

Attachment I

U.S. Department of Energy
American Recovery and Reinvestment Act (ARRA)
State Energy Plan (SEP)
Terms and Conditions

SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS

RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Grant and Cooperative Agreement cover page, plus the following:

- a. Special terms and conditions.
- b. Attachments:

| Attachment No. | Title |
|----------------|--|
| 1 | Intellectual Property Provisions |
| 2 | Federal Assistance Reporting Checklist |
| 3 | Budget Page(s) |
| 4 | SEP Narrative Information Worksheets |

- c. Applicable program regulations (*specify*) 10 CFR 420 (*Date*) _____
- d. DOE Assistance Regulations, 10 CFR Part 600at <http://ecfr.gpoaccess.gov>
- e. Application/proposal as approved by DOE.
- f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

- a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.
- b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

INCREMENTAL FUNDING AND MAXIMUM OBLIGATION - COEXTENSIVE BUDGET PERIOD AND PROJECT PERIOD

This award is funded on an incremental basis. The maximum obligation of the DOE is limited to the amount shown in Block 13 on the Agreement Face Page. You are not obligated to continue performance of the project beyond the total amount obligated and your pro rata share of the project costs, if cost sharing is required. Additional funding is contingent upon the availability of appropriated funds and substantial progress towards meeting the objectives of the award.

STAGED DISBURSEMENT – RECOVERY ACT FUNDS

Funding under this Recovery Act formula grant award will be obligated in accordance with the following disbursement schedule:

- 10% of the recipient's total allocation at time the initial grant is awarded.
- 40% of the recipient's total allocation upon DOE approval of the State Plan. This will be done through an amendment to the grant award.
- 10 - 20% of the recipient's total allocation amount when recipients demonstrate that they have obligated funds appropriately and jobs are being created, based on DOE review of the progress reports and monitoring.
- 30 - 40% of the recipient's total allocation amount when the recipient demonstrates continued progress based on DOE review of the progress reports and monitoring.

If Progress Reviews reveal deficiencies, such as funds not disbursed, jobs not created, insufficient technical monitoring, or failure to meet reporting requirements, DOE reserves the right to place a hold on current balances, and withhold further funding until deficiencies are corrected.

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

- a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.
- b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

USE OF PROGRAM INCOME - ADDITION

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

SITE VISITS

DOE authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space,

resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

REPORTING REQUIREMENTS

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).
- c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number(s) DE-EE0000228."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- a. The intellectual property provisions applicable to this award are provided as an attachment to this award. A list of all intellectual property provisions may be found at

b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at
[http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS

a. Unless in conflict with State or local laws, you must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a subaward to this agreement, do not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

b. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

c. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

DECONTAMINATION AND/OR DECOMMISSIONING (D & D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds – the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course

of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement

RESERVED

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

Designated country —(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods —(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good —(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using federal funds for projects under this award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

Prohibited project activities include:

1. Business and Commercial EE/RE Loan/Grant Program – all activities.
2. CCSNH EE/RE Building Projects – all activities except retrofits of existing buildings, including but not limited to installation of green and living roof and photovoltaics.
3. Expanded Renewable Energy Program – all activities except data collection and analysis and grants/financial incentives for residential, commercial and non-profit institution installations of renewable energy systems such as solar hot water and central biomass heating.
4. Innovative Initiatives – all activities.
5. Small Business EE/RE Grant/Loan Program – all activities except installation of energy efficiency and renewable energy systems in existing small business facilities.
6. State Building EE/RE Program – all activities except energy efficiency improvements in existing state-owned buildings.

The project activities listed above will require an individual NEPA review and determination. You must submit an environmental questionnaire to the DOE Project Officer for each project activity identified above to allow DOE to conduct an individual NEPA review and determination.

If you move forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA determination, you are doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

If DOE determines that NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for a project you propose, you will be responsible for paying the cost of preparing an EA or EIS. Preparation of these types of NEPA documents can require 6-24 months. Accordingly you should carefully consider whether such projects are consistent with the objectives of the ARRA and will allow the expenditure of funds within the time periods allowed for by that statute.

This restriction does not preclude you from: *performing information gathering, analysis, documentation, dissemination and training and providing technical advice and planning assistance for the activities listed above.*



NHRECOVERY
putting new hampshire to work



March 24, 2010

Attachment II

United States Office of Management and Budget

Implementing Guidance for the Reports on Use of Funds
Pursuant to the American Recovery and Reinvestment
Act of 2009

Dated: June 22, 2009

awards. Further, OMB has worked with the Recovery Accountability and Transparency Board to deploy a nationwide data collection system at the website www.FederalReporting.gov that will reduce information reporting burden on recipients by simplifying reporting instructions and providing a user-friendly mechanism for submitting required data. However, the attached guidance is not intended to serve as a detailed set of user instructions for the www.FederalReporting.gov system. Instead, additional details for interacting with the system will be provided through the solution itself.

The attached guidance does not apply to Federal government contracts. Additional guidance to Federal government contractors will be forthcoming. Further, as the President directed in his March 20, 2009, Memorandum entitled "Ensuring Responsible Spending of Recovery Act Funds," OMB conducted a 60-day review of the Administration's policy on communications with lobbyists regarding Recovery Act funds. OMB's revised guidance on lobbyist communications is also forthcoming.

Any questions about the requirements contained in the guidance can be sent to recovery@omb.eop.gov.

Thank you for your cooperation.

Attachment

Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009

Table of Contents

| | |
|---|----|
| TABLE OF CONTENTS..... | 1 |
| SECTION 1 – GENERAL INFORMATION..... | 2 |
| SECTION 2 – BASIC PRINCIPLES AND REQUIREMENTS OF RECOVERY ACT RECIPIENT REPORTING..... | 6 |
| SECTION 3 – RECIPIENT REPORTING PROCESS..... | 16 |
| SECTION 4 – DATA QUALITY REQUIREMENTS..... | 27 |
| SECTION 5 – REPORTING ON JOBS CREATION ESTIMATES BY RECIPIENTS..... | 33 |
| APPENDIX – REFERENCE SHEET OF FREQUENTLY USED GUIDANCE TERMS..... | 38 |

Section 1 – General Information

1.1 What is the purpose of this Guidance?

The purpose of this Guidance is to provide Federal agencies and funding recipients with information necessary to effectively implement the reporting requirements included in Section 1512 of the American Recovery and Reinvestment Act of 2009 (“Recovery Act,” or “the Act”).

This Guidance:

- Answers questions and clarifies issues related to the mechanics and chronology of recipient reporting required by the Recovery Act;
- Provides clarification on what information will be required to be reported into the central reporting solution at www.FederalReporting.gov and what information will be reported on www.Recovery.gov;
- Instructs recipients on steps that must be taken to meet these reporting requirements, including the incorporation of sub-recipient reporting requirements under Section 1512(c)(4) of the Act; and
- Establishes a common framework for Federal agencies and recipients to manage a data quality process associated with the Recovery Act recipient reporting requirements.

1.2 Does this Guidance modify any previously issued guidance by the Office of Management and Budget (OMB) related to recipient reporting?

This Guidance builds on previously issued guidance materials, covering new areas not previously addressed (e.g., data quality requirements and logistical details surrounding the www.FederalReporting.gov reporting solution), but it also clarifies, and in some cases modifies, previously issued requirements. In particular, this Guidance:

- Identifies additional data elements required pursuant to Section 1512 of the Recovery Act to enhance transparency (Section 2.3 and the supplemental materials to this Guidance);
- Modifies requirements related to recipient data reporting due on July 10, 2009 (Section 2.6); and
- Updates information on methodologies and approaches for reporting job creation/retention estimates (Section 5).

1.3 To which Federal programs does this Guidance apply?

A list of Federal programs subject to Section 1512 of the Recovery Act will be posted on OMB’s website and www.Recovery.gov as supplemental materials to this Guidance.

1.4 Does this Guidance apply to both recipients of Federal assistance awards and Federal contract awards under the Recovery Act?

No. This Guidance does not apply to recipients of Federal contract awards directly from the Federal government. However, recipients of Federal contract awards directly from the Federal government will submit information required by Section 1512 of the Recovery Act through the www.FederalReporting.gov website. The relevant guidance for these recipients is provided in interim Federal Acquisition Regulation (FAR) clause 52.204-11. It is important to note that consideration of the public comments received on the interim FAR clause might result in changes to the clause when it is finalized. Therefore, further guidance, instructions, and examples specifically applying to Federal government contractors will be published in the Federal Register when the clause is finalized. The explanations and example on estimating jobs in Section 5 of this Guidance is consistent with the current interim FAR clause.

In addition, individuals receiving direct payments from the Federal government are not subject to the reporting requirements outlined in this Guidance, as defined by Section 1512(b)(1)(A) of the Act. Sole proprietorships however are subject to the reporting requirements (Section 2.2).

Recipients of loan guarantees are not subject to the reporting requirements outlined in this Guidance, as defined by Section 1512(b)(1)(A) of the Act except 100 percent guaranteed loans financed through the Federal Financing Bank

The provisions in the Guidance apply to recipients of grants, loans, tribal agreements, cooperative agreements, and other forms of assistance (other than those noted above). This Guidance also applies to sub-awards and other payments made by recipients of Federal assistance, including those awards or payments that are made in the form of a contract (i.e., contracts made by an entity other than the Federal government). The reporting requirements do not apply to recipients receiving funds through entitlement or tax programs or to individuals.¹ The Federal agency or prime recipient awarding funds to individuals will report the aggregated amounts disbursed to individuals. Section 2.4 of this Guidance provides further instruction on aggregate reporting.

1.5 Does this Guidance contain any specific provision for a Federal agency to seek a waiver of existing legislative or administrative requirements?

No. If a Federal agency believes it is appropriate to seek a waiver of an existing requirement in order to facilitate effective implementation of the Recovery Act, the Federal agency shall pursue such waiver consistent with existing Federal processes (e.g., waivers for the Paperwork Reduction Act).

¹ To avoid using personal identification, sole proprietorships should register using a TIN or EIN.

1.6 Do the Federal agencies have flexibility to issue further program-specific guidance on recipient reporting?

This Guidance is not intended to impact requirements outside of Section 1512 of the Recovery Act. The Recovery Act may contain additional recipient reporting responsibilities that are specific to certain Federal programs. Recipients will have to comply with any reporting as outlined in the award agreement, which may result in submitting similar data under this Guidance to the Federal awarding agency. In these areas, recipients should rely on program-specific guidance and instructions issued by the relevant Federal agency.

Thus, it is anticipated that Federal agencies will, as appropriate, issue clarifying guidance to funding recipients. Additional guidance for Recovery funding recipients must be in accordance with OMB guidance. Federal agency-specific reporting guidance must not, without prior approval from OMB, require the use of any existing reporting systems to collect Section 1512 reporting that exclude or bypass the central reporting solution at www.FederalReporting.gov. See also Section 2.8.

1.7 What is the process for the public to provide input or comment on the provisions of this Guidance?

Feedback about this guidance document may be submitted to recovery@omb.eop.gov and should have the term “guidance feedback” in the title of the email. Further, the Recovery Accountability and Transparency Board (“Board”) expects to issue a separate Federal Register notice as part of the Paperwork Reduction Act (PRA) clearance process. This Federal Register notice follows the original PRA notice published April 1, 2009. The public will have an opportunity to comment through the updated PRA notice which will include the new data elements added to the Section 1512 reporting model as described in Section 2 of this Guidance.

1.8 What additional Recovery Act Implementation Guidance is available?

| | |
|-------------------|---|
| February 20, 2009 | M-09-10 Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009 http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m0910.pdf |
| February 25, 2009 | Bulletin No.09-02 Budget Execution of the American Recovery and Reinvestment Act of 2009 Appropriations http://www.whitehouse.gov/omb/assets/bulletins/b09-02.pdf |
| March 2009 | OMB Circular No. A-133 Single Audit Compliance Supplement http://www.whitehouse.gov/omb/circulars_a133_compliance_09toc/ |
| April 3, 2009 | M-09-15 Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf |
| May 11, 2009 | M-09-18 Payments to State Grantees for Administrative Costs of Recovery Act Activities http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-18.pdf |

June 30, 2009²

Addendum to the Single Audit Compliance Supplement – American Recovery and Reinvestment Act

http://www.whitehouse.gov/omb/circular_a133_compliance_09toc/

1.9 Under what authority is this Guidance being issued?

This Guidance is issued under the authority of 31 U.S.C. 1111; Reorganization Plan No. 2 of 1970; Executive Order 11541; the Chief Financial Officers Act of 1990 (Pub. L. 101-576); the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282); and the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

² The Addendum is planned for publication on June 18, 2009, and will be available at the link provided.